

1
2 UNITED STATES BANKRUPTCY COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN RE:

4 RESIDENTIAL CAPITAL, LLC, et al.

5
Civil Action No. 12-12020 (MG)

6 -----X

7 ***HIGHLY CONFIDENTIAL***

8 VIDEO DEPOSITION OF AL CELINI

9 Philadelphia, Pennsylvania

10 November 8, 2013

11
12 Yellow Highlighting = JSN Designation

13 Pink Highlighting = Plaintiff's Designation & Counter-Designation

14 Orange Highlighting = Joint Designation

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17 Reported by:

18 Rebecca Schaumloffel, RPR, CLR

19 Job No: 66995
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November 8, 2013

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9:03 a.m.

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Video deposition of Al Celini, held

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at the WESTIN HOTEL, 99 S. 17th Street,

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Philadelphia, Pennsylvania, New York before

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Rebecca Schaumloffel, a Registered

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Professional Reporter, Certified Livenote

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Reporter and Notary Public of the State of

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New York.

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1
2 A P P E A R A N C E S:

3
4 MORRISON & FOERSTER

Attorneys for the Debtors
5 1290 Avenue of the Americas
New York, New York 10104
6 BY: ROBERT BAEHR, ESQ.
7
8
9

10 KRAMER LEVIN NAFTALIS & FRANKEL

Attorneys for the Creditors
Committee
11 1177 Avenue of the Americas
New York, New York 10036
12 BY: KURT DENK, ESQ.
(Telephonically)
13
14
15

16 MILBANK TWEED, HADLEY & McCLOY

Attorneys for Junior Secured
17 Lenders
1 Chase Manhattan Plaza
18 New York, New York 10005
BY: ATARA MILLER, ESQ.
19 KELLY PRESSLER, ESQ.
20
21

22 KIRKLAND & ELLIS

Attorneys for Ally
655 Fifteenth Street, N.W.
23 Washington, DC 20005
BY: JUDSON BROWN, ESQ.
24 JODI WU, ESQ.
25

1
2
3 APPEARANCES (continued:)
4

5 KELLEY DRYE & WARREN

Attorneys for UMB Bank
6 101 Park Avenue
New York, New York 10178
7 BY: JASON ADAMS, ESQ.
(Telephonically)
8
9

10 MORGAN LEWIS

1701 Market Street
Philadelphia, Pennsylvania 19103
11 BY: RACHEL JAFFE MAUCERI, ESQ.
12
13

14 CADWALADER WICKERSHAM & TAFT

Attorneys for MBIA Insurance Corp.
One World Financial Center
15 New York, New York 10281
BY: JARED STANISCI, ESQ.
16 (Telephonically)
17

18 ALSO PRESENT:
19

Sara Kam, Esq. Reed Smith
20 (telephonically)
21 Gerard Alfe, videographer
22
23

* * *

1 A. CELINI

2 THE VIDEOGRAPHER: This is the
3 start of tape labeled number one in
4 the deposition of Al Celini taken in
5 the matter In Re Residential Capital,
6 LLC, et al. being held in the United
7 States District Court, Southern
8 District of New York, civil action
9 number 12-12020 (MG).

10 The deposition is being held at
11 the Westin Philadelphia, 99 South 17th
12 Street, Philadelphia, PA 19103. The
13 date is November 8, 2013. The time is
14 9:03.

15 Counsel will be appearing on the
16 stenographic record.

17 Please swear in the witness.

18 A L C E L I N I, called as a witness,
19 having been duly sworn, testified as
20 follows:

21 MS. MILLER: Before we start, I
22 just want to correct on the record the
23 caption that was put on the record at
24 the beginning of the deposition stated
25 that the case was pending in the

1 A. CELINI

2 District Court for the Southern
3 District of New York, and the case and
4 the civ number put on the record is
5 actually related to the case which is
6 this case that's pending in the
7 Bankruptcy Court for the Southern
8 District of New York.

9 MR. BROWN: Atara, do you want
10 counsel to identify themselves on the
11 record before you begin?

12 MS. MILLER: I think they are
13 identified on the record already.

14 MR. BROWN: Let's have everyone
15 on the phone identify themselves. We
16 had an additional beep there. I want
17 to make sure everyone on the phone is
18 identified on the record.

19 MR. DENK: That's Kurt Denk from
20 Kramer Levin on behalf of the
21 Committee. K-U-R-T, last name
22 D-E-N-K.

23 MR. ADAMS: Jason Adams from
24 Kelley Drye.

25 MR. STANISCI: Jared Stanisci

1 A. CELINI

2 from Cadwalader.

3 MR. BROWN: Anyone else on the
4 phone?

5 MS. KAM: Sarah Kam from Reed
6 Smith on behalf of Wells Fargo.

7 MR. BROWN: Anyone else on the
8 phone? Okay.

9 BY MS. MILLER:

10 Q. Good morning, Mr. Celini. I am
11 Atara Miller from Milbank, Tweed, Hadley and
12 McCloy, and we represent the ad hoc group of
13 junior secured note holders in this action.

14 THE VIDEOGRAPHER: One moment,
15 please. I don't know if the witness
16 was sworn in. I apologize.

17 MS. MILLER: He was.

18 A. Okay.

19 Q. Do you understand that you are
20 under oath here today?

21 A. Yes, I do.

22 Q. And you have been sworn in,
23 right?

24 A. Yes, I have been.

25 Q. With that, I am going to go over

1 A. CELINI

2 just a couple of basic ground rules for a
3 deposition. As you know, today's deposition
4 is both being videotaped, but it's also being
5 recorded by the Court Reporter in a
6 stenographic written record. She is writing
7 down every word that I say and that you say.
8 So if you could wait for me to finish asking
9 my questions before you start answering, that
10 would be appreciated, and I will do the same.
11 If you could, also, give verbal responses to
12 my questions, no nods of the head, smiles,
13 et cetera.

14 A. Understood.

15 Q. And there may be times during the
16 day where your counsel will object to a
17 question that I ask. I am going to ask to
18 you still answer my question, unless you are
19 specifically instructed by your counsel not
20 to answer that question.

21 Does that work?

22 A. Understood.

23 Q. Okay. If at any time during the
24 day you want to take a break, just let me
25 know. I would be happy to take a break. I

1 A. CELINI

2 am just going to ask that you answer any
3 question that I have already placed that's
4 pending before you -- before we take a break.
5 Okay?

6 A. Yes.

7 Q. Mr. Celini, have you ever been
8 deposed before?

9 A. No.

10 Q. Did you sit for interviews with
11 the examiner?

12 A. Yes.

13 Q. Were those interviews recorded?

14 A. Yes, they were. I believe they
15 were.

16 Q. Is it your understanding that
17 those were audio recordings?

18 A. Yes.

19 Q. And were you under oath when you
20 gave those interviews?

21 A. No, I was not.

22 Q. Do you believe that everything
23 that you told the examiner was truthful and
24 accurate?

25 A. Yes, absolutely.

1 A. CELINI

2 Q. Would it be consistent with the
3 testimony that you would have given had you
4 been under oath?

5 A. Yes.

6 Q. Mr. Celini, where do currently
7 work?

8 A. I'm an executive officer for Sun
9 National Bank based out of Vineland, New
10 Jersey.

11 Q. How long have you been there?

12 A. About 11 months.

13 Q. When did you first start working
14 for Ally?

15 MR. BROWN: Objection to form.

16 What do you mean by "Ally"?

17 MS. MILLER: Either Ally or any
18 of its subsidiaries.

19 A. It was in 2001, I believe,
20 January of 2001. And at the time, it was
21 GMAC.

22 Q. And did you work for GMAC?

23 A. Yes.

24 Q. What was your position when you
25 first joined in 2001?

1 A. CELINI

2 A. I joined as the CFO of GMAC Bank.

3 Q. How long did you hold that
4 position for?

5 A. Three years.

6 Q. And what was your next position?

7 A. Chief risk officer.

8 Q. And how long did you hold that
9 position for?

10 A. Three years.

11 Q. Did you have any other positions
12 after being chief risk officer?

13 A. Director of lending development.

14 Q. And how long did you have that
15 position for?

16 A. Again, until I departed. Until I
17 left.

18 Q. And when did you leave?

19 A. It was at the -- I believe it was
20 at the end of 2009.

21 Q. And just so we are clear, did
22 there come a time when GMAC Bank became Ally
23 Bank?

24 A. Yes.

25 Q. When was that?

1 A. CELINI

2 A. I forget the actual date that it
3 occurred. I know there was a rebranding
4 initiative, so I don't recall the exact date.
5 But it was part of my last four years that I
6 was there.

7 Q. Throughout the time that you
8 described when you were CFO, chief risk
9 officer and then director of lending
10 development, you always worked for GMAC Bank
11 or Ally Bank?

12 A. Correct, yes.

13 Q. You have to wait me for to
14 answer -- finish my question.

15 A. I have to get my --

16 Q. It's okay. We will get into a
17 groove.

18 A. My groove, yes.

19 Q. So you continuously worked for
20 the entity that was known as either GMAC Bank
21 or Ally Bank as applicable during the
22 relevant period?

23 A. Yes.

24 Q. So if I say "Ally" today, unless
25 I am more specific, I will be referring to

1 A. CELINI

2 Ally Bank or GMAC Bank. Is that understood?

3 A. Understood.

4 MR. BROWN: I will object to
5 that. Just because Ally has been used
6 so differently throughout these cases
7 by different folks. Ally is sometimes
8 referred to Ally Financial, Inc. Ally
9 has sometimes referred to Ally
10 Financial, Inc. and its
11 non-debtor Ally subsidiaries. Ally at
12 times has referred to Ally and all of
13 its subsidiaries. So if you want to
14 refer to Ally Bank as Ally, that's
15 fine. But I will have to object to
16 the question because it is just not
17 going to be clear to me what Ally
18 means.

19 MS. MILLER: Well, I am telling
20 you right now what Ally means. It
21 means Ally Bank.

22 MR. BROWN: Fine. I am telling
23 you unless the question is clear, I am
24 just going to have to object. Because
25 using Ally to refer to Ally Bank is

1 A. CELINI

2 entirely unclear.

3 MS. MILLER: If that's the basis
4 for your objection, you can object and
5 you can defend that to the bank when
6 it's clearly defined a term on the
7 record and the witness has accepted
8 that definition.

9 Q. So we will go ahead with, if I
10 refer to Ally, I will be referring to Ally
11 Bank, which is the entity that you are
12 familiar with and that you were personally
13 employed by; is that right?

14 A. Yes.

15 Q. Okay. If I refer to "the bank,"
16 you will also understand that I am referring
17 to Ally Bank or GMAC Bank as applicable
18 during the period I'm talking about, right?

19 A. Yes.

20 Q. Can you just go through your
21 post-high school education for me?

22 A. Post high-school --

23 Q. College and on.

24 A. The undergraduate degree, Fordham
25 University, major in accounting. Graduated

1 A. CELINI

2 1984. Sat for the CPA exam a few years
3 later. Passed the New York State public
4 certified accountant and that's my formal --
5 I have not attended graduate school. So I
6 have done my professional, all my CPU during
7 that time.

8 Q. And are you currently a certified
9 public accountant?

10 A. Yes, I am.

11 Q. Have you maintained that
12 certification throughout the period from the
13 time you got it until today?

14 A. Yes.

15 Q. What were your duties and
16 responsibilities as CFO of GMAC Bank?

17 A. To oversee all the financial
18 activities, financial reporting and safety
19 and soundness of the bank in its financial
20 matters.

21 Q. What responsibility, if any, did
22 you have for reviewing financial statements
23 prepared by ResCap subsidiaries, ResCap and
24 its subsidiaries?

25 A. None.

1 A. CELINI

2 Q. And what were your duties and
3 responsibilities as the chief risk officer?

4 A. To establish the risk parameters,
5 risk monitoring activities for credit risk,
6 operational risk, which would include
7 compliance as well as safety and soundness of
8 the depository.

9 Q. When you say "compliance," are
10 you including compliance with applicable
11 regulations?

12 A. Yes.

13 Q. And are you also including
14 compliance with GAAP accounting principles?

15 A. It's not my responsibility as
16 chief risk officer, it was not.

17 Q. What else were you ensuring
18 compliance of, regulations and anything else?

19 A. Regulations. Obviously,
20 regulations, compliance with the bank's
21 policies.

22 Q. Were you responsible for
23 reviewing bank policies?

24 A. Yes.

25 Q. Were you responsible for

1 A. CELINI

2 reviewing major transactions to ensure that
3 they complied with the applicable regulations
4 and bank policies?

5 MR. BROWN: Objection to form.

6 Q. You can answer.

7 A. Yes.

8 Q. What were your duties and
9 responsibilities as director of lending
10 development?

11 A. They were primarily to work to
12 expand the asset activities of the bank.
13 Working with the various affiliate entities
14 of GMAC. That would be auto lending,
15 commercial lending, mortgage lending
16 activities.

17 Q. And what are the asset activities
18 of the bank?

19 A. The bank was primarily -- had
20 mortgage lending assets, mortgage assets,
21 residential mortgage assets as the primary
22 asset base. Also did -- at various times had
23 auto financing activities in it, and we did
24 some commercial real estate lending for some
25 auto dealers.

1 A. CELINI

2 Q. So was one of your jobs to
3 increase the amount of residential mortgage
4 assets that the bank was --

5 A. Yes.

6 Q. --involved with?

7 A. So the answer is yes.

8 Q. She is very good. She got your
9 answer, but you should still wait.

10 A. I will get with it eventually.

11 Q. Mr. Celini, can you explain what
12 the 250.250 exemption is?

Plaintiff's Objection
18:11-19:18
Irrelevant (FRE 401,
402)

13 A. 250.250 exemption is a -- sort of
14 an acronym for Reg W 12 CFR, I think it's
15 243 K, I think, I forget the actual citation,
16 but it's -- it was the exemption that was
17 allowed under Reg W to allow a depository to
18 purchase assets from affiliated entities, and
19 it created a series of limitations and
20 restrictions as to how it could be acquired
21 and the types of assets that could be
22 acquired.

23 Q. And did it also have limitations
24 on the amount of assets that could be
25 acquired?

1 A. CELINI

2 A. Yes.

3 Q. What were those limitations?

4 MR. BROWN: Objection to form.

5 Q. You can answer.

6 A. Limitations were no more of 50%
7 of production.

8 Q. No more than 50% of production
9 could be from assets being acquired by a
10 related entity?

11 MR. BROWN: Objection to form.

12 A. So I don't recall the letters and
13 verse of the regulation today. So there
14 were -- there were restrictions as to who was
15 50% of the production of the affiliate, I
16 believe, that was the requirement there, and
17 no more than 50% of the depository's assets
18 could be from those activities as well.

19 Q. And what -- does Reg W regulate
20 affiliated entity transactions?

21 A. Can you clarify that? I am not
22 sure.

23 Q. What is Reg W?

24 A. Reg W is a banking regulation
25 that requires, specifies the terms and

1 A. CELINI

2 conditions by which a bank can do business
3 with a non-banking affiliates. So prescribes
4 a litany of, you know, items, you know,
5 prohibited covered transactions, low quality
6 asset activities and prohibits the purchases
7 of assets from affiliates and certain
8 conditions subject to exemptions.

9 Q. Did that apply to Ally -- or GMAC
10 Bank or Ally Bank's transactions with GMAC
11 Mortgage?

12 A. Can you clarify that? What
13 type -- so it would apply for a number of
14 transactions. A lot -- many of its
15 transactions, but the exemptions only applied
16 to certain ones. So I need clarification.

17 Q. Let me reask my question. For
18 purposes of Reg W, was GMAC Bank or Ally Bank
19 considered a banking entity?

20 A. Yes.

21 Q. And GMAC Mortgage was a
22 non-banking affiliate, right?

23 A. Right, it was a 23A affiliate.

24 Q. Were you responsible for viewing
25 the bank's records to ensure compliance with

1 A. CELINI

2 Reg W?

3 MR. BROWN: Objection to form.

4 At what time period are you talking
5 about?

6 MS. MILLER: When he was the
7 chief risk officer.

8 A. Yes.

9 Q. And did you -- did you have that
10 responsibility at any other time?

11 A. As CFO, I had responsibility as
12 well.

13 Q. And so if my calculation is
14 right, that's from about 2001 when you joined
15 the bank through, approximately, 2007?

16 A. That sounds correct.

17 Q. Do you know exactly when you
18 transitioned into being the director of
19 lending development?

20 A. I don't recall the specific date.

21 Q. Do you recall approximately when
22 in 2007 or 2008 that happened?

23 A. That's probably --

24 MR. BROWN: Objection to form.

25 Mischaracterizes testimony.

1 A. CELINI

2 MS. MILLER: No speaking
3 objections, please. You can just
4 object to form.

5 A. Again, I don't recall a specific
6 date. It was probably in midway through 2007
7 would be my, you know, best estimate.

8 Q. And did there come a time --
9 sorry, did the 250.250 exemption limit the
10 amount of expansion in the residential
11 mortgage assets that the bank could acquire?

12 MR. BROWN: Objection to form.

13 A. Atara, I think you need to
14 clarify it for me. In what way? It
15 limited -- can you be more specific as to
16 what --

17 Q. Let me ask it differently. In
18 reviewing the bank's records, did there come
19 a time where you understood that the bank was
20 getting close to the limitations imposed even
21 under the 250.250 exemption?

Plaintiff's
Objection
22:17-23:15
Irrelevant (FRE
401, 402)

22 MR. BROWN: Objection to form.

23 A. So, yes, there were -- we
24 carefully watched the level of production
25 purchase from the affiliates and carefully

1 A. CELINI

2 monitored it to know when we were coming
3 close or near to the limits and monitored it
4 carefully so we would not exceed.

5 Q. And did there come a time when
6 you observed that you were coming close to
7 those limits?

8 MR. BROWN: Objection to form.

9 A. So various times, so yes. I
10 mean, you know, we -- we -- it happened
11 several times. I mean, during -- from the
12 beginning of the bank's existence to when we
13 started using the exemption, through its
14 entire existence. I mean, again, we watched
15 that level very carefully.

16 Q. Can you explain, very generally,
17 how mortgages -- mortgage assets were
18 acquired and then either -- how mortgages
19 were acquired by the bank at the time that
20 you joined the bank?

21 A. Again, you want to be more
22 specific? Because the bank had several ways
23 to acquire mortgages when I joined the bank.

24 First, when I joined the bank,
25 it -- there was no native origination

1 A. CELINI

2 capacity of the bank. It was formed as a de
3 novo. So we built those functions. So at
4 inception, its first assets that it was
5 buying were through the 250.250 exemption.
6 So it purchased loans that it had evaluated
7 and underwritten as to meet its criteria, its
8 set credit policy criteria, and it would
9 underwrite and review the loans, and then,
10 after closing, it would buy them as closed
11 loans.

12 Q. Who would it buy those loans
13 from?

14 A. It bought loans from GMAC
15 Mortgage.

16 Q. And did there come a time when
17 the bank started originating loans itself?

18 A. Yes.

19 Q. And when was that?

20 A. I don't recall the specific
21 dates, but soon after the bank was formed,
22 the bank, you know, moved -- acquired the
23 origination capacity, the individuals and
24 systems and platforms of GMAC Mortgage's
25 correspondent lending group and its warehouse

1 A. CELINI

2 lending group. So even then, you know, as a
3 correspondent, the bank didn't originate it,
4 purchased loans from third-party
5 correspondence. But it had a small group
6 that it -- a small group within that did
7 broker loans. So -- but it wasn't its
8 primary activity. So the bank did very
9 little of its own native origination to
10 purchase closed loans from third-party
11 correspondence. It purchased loans using the
12 250.250 exemption.

13 Q. About what timeframe was that?

14 MR. BROWN: Objection to form.

15 A. Atara, I don't recall the date.
16 It was generally, probably in the bank's
17 early years. Maybe 2003. Sometime.

18 Q. And did that continue to be the
19 way that the bank acquired loan assets, by
20 purchasing them from GMAC Mortgage under the
21 250.250 exemption, acquiring them under
22 correspondent lending agreements and some
23 small amount of origination through the bank
24 itself until 2000 -- late 2007?

25 A. So those methods were the primary

1 A. CELINI

2 asset -- acquisition strategies used. I
3 don't recall the date. But in -- when we --
4 the financial crisis started, you know,
5 started to bubble in, probably, 2007, late
6 2007, when we -- in my new role as director
7 of lending development, was tasked with the
8 ways to explore, ways to, you know,
9 accelerate or expand our lending beyond the
10 250.250 exemption with our affiliate GMAC
11 Mortgage.

12 Q. What were the benefits to the
13 bank in expanding its lending capacities
14 beyond the 250.250 exemption?

Plaintiff's Objection
26:12-24: Irrelevant
(FRE 401, 402)

15 A. As a source of the benefits we
16 would accrue from having, you know, greater
17 asset base to earn net interest spread, fees,
18 originations, et cetera. So just
19 advantageous for it to use, you know, to
20 deploy its liquidity to earn -- to earn, have
21 an interest earning assets. The bank had
22 ample liquidity and in 2007, there were
23 challenges starting, in some severe
24 challenges, at the affiliate.

25 Q. And what would the impact have

1 A. CELINI

2 been on the bank if GMAC Mortgage didn't have
3 the liquidity to originate loans?

4 MR. BROWN: Objection to form.
5 Mischaracterizes testimony. He said
6 GMAC Bank.

7 MS. MILLER: You said I did?

8 MR. BROWN: No, I think the
9 witness said GMAC Bank.

10 A. So can you clarify your question,
11 Atara, are you asking about the bank, the
12 benefits to the bank or the benefits to the
13 affiliate?

14 Q. My question is, not benefits --
15 you answered benefits. I appreciated that.
16 My question now is, what would the impact on
17 the bank have been if GMAC Mortgage was
18 unable to acquire -- was unable to originate
19 loans that were then available for
20 acquisition by the bank?

Plaintiff's
Objection
27:14-28:9
Irrelevant (FRE
401, 402)

21 MR. BROWN: Objection to form.

22 A. I believe I understand the
23 question. So I will answer. The -- the
24 affiliate was one of the major sources of
25 earning asset acquisition that we had. Not

1 A. CELINI

2 the only. We had correspondent capability to
3 buy from third parties. So, you know, if the
4 affiliate wasn't able to originate, we would
5 lose an opportunity to have, you know, make
6 available to us, you know, conforming, you
7 know, Fannie Mae, Freddie agency loans that
8 were, you know, of a favorable risk profile
9 for us.

10 Q. So if GMAC Mortgage didn't have
11 enough liquidity to be able to originate the
12 loans, the bank would have lost or would have
13 had a significant source of assets negatively
14 impacted, right?

JSN Objection
28:10-29:11
FRE 611(a)
(Non-responsive)

15 MR. BROWN: Objection to form.

16 A. Atara, I wouldn't characterize it
17 as "significant." It would have been one of
18 the ways that, you know, the bank was always
19 able to originate on its own. We just -- you
20 look to maximize, you know, your acquisition.
21 So if the affiliate was not there, the bank
22 would have been fine. It would have had more
23 than adequate activities there. So to
24 sustain itself. Didn't need the -- the bank
25 never needed the AFI's assets. It desired

1 A. CELINI

2 them for its own profitability. And, you
3 know, again, GMAC Mortgage was a service
4 provider to us as well. Subserviced our
5 loans. They provided administrative services
6 to us. So, you know, if our -- if the
7 affiliate was not able to originate, it could
8 have been -- it could have weakened them to a
9 point that they would not have been able to
10 support our activities and we would have had
11 to get them from third-parties.

12 Q. And would the bank have had to
13 pay more if it had to get those services from
14 third parties?

15 MR. BROWN: Objection to form.

16 A. I am not sure, Atara. I mean Reg
17 W requires that you -- services be, you know,
18 under 23B, be at market rates or better to
19 the bank. So we would have been able to find
20 those services and been able to sustain
21 ourselves fine.

22 Q. Reg W doesn't really require that
23 it be market rate, right, you said market
24 rate or better?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 THE WITNESS: I am not quite
3 sure why -- that you are objecting.
4 But whatever you want do, you're fine.

5 Q. He's just going to object to
6 every question, so you can ignore it and keep
7 on answering.

8 MR. BROWN: That
9 characterization, Mr. Celini, is
10 incorrect. As you have already seen,
11 I don't object to every question. I
12 only object when I don't understand
13 the question or when she
14 mischaracterizes your testimony or any
15 number of things. Her question that
16 she just asked --

17 MS. MILLER: Nope. No speaking
18 objections.

19 MR. BROWN: -- Mischaracterizes
20 your testimony and was entirely
21 unclear to me.

22 Q. The basic rule, let's go over it
23 again. He is going to object. Unless he
24 specifically says "I instruct the witness not
25 to answer," you can just disregard his

1 A. CELINI

2 objection. He is putting it on the record.
3 He will have to justify it before the Court.
4 Unrelated to this deposition. You just go
5 ahead and answer.

6 A. My point is, if I don't
7 understand --

8 Q. Ask for clarification.

9 A. I'll make sure you clarify.

10 Q. Thank you.

11 A. So again, therefore, can you
12 restate your question again? Sorry.

13 Q. Yes. I don't remember it.

14 A transaction would still be
15 consistent with Reg W if it was at a better
16 than market rate for the bank, right?

17 MR. BROWN: Objection to form.

18 A. I understand and that's correct.
19 23B requires arm's length terms, market terms
20 or better to the depository.

21 Q. And Reg W is specifically
22 intended to protect commercial banks, right?

23 MR. BROWN: Objection to form.

24 A. In general. I am not an
25 attorney. But in general, the requirement of

1 A. CELINI

2 the foundation of Reg W, in my judgment, is
3 it was established to protect insured
4 depositories from, you know, from abuses that
5 could occur from non-banking activities.

6 Q. In late 2007, do you recall
7 approximately what percentage of the bank's
8 mortgage assets were being acquired from GMAC
9 Mortgage?

Plaintiff's
Objection
32:6-23 Irrelevant
(FRE 401, 402)

10 A. I don't recall.

11 Q. Do you remember if it was
12 something north of 40%?

13 MR. BROWN: Objection to form.

14 A. Honestly, I can't answer that.
15 We kept the -- we kept ourselves close to the
16 50% limit but just below it to make sure that
17 we had cushion for any potential coverage
18 transactions that could arise. So, again, I
19 don't know the exact number, but typically,
20 we would give ourselves some cushion away
21 from the 50% level. So it would be not 50%,
22 it would have to be some number less
23 than 50%.

24 Q. So 47% sounds like it might be
25 reasonable?

1 A. CELINI

2 MR. BROWN: Objection to form.

3 A. You know, I can't answer that. I
4 don't know. Again, it could have been that
5 number. It was monitored on a daily basis.

6 Q. When you say that you wanted to
7 give yourself some amount of cushion away
8 from 50% level, what percentage of cushion
9 would you have been comfortable with?

10 MR. BROWN: Objection to form.

11 A. Any number -- as a general rule,
12 we try to give ourselves a level of cushion
13 based on the amount of transactions we had.
14 So a covered transaction, a violation would
15 occur if we exceeded that. So the range
16 could vary from time to time. So, again, I
17 don't feel comfortable giving you, telling
18 you what the cushion was. I mean, it varied
19 depending on, you know, where we were with
20 the originations. What was the -- what was
21 our intercompany balance with the affiliate.
22 You had to aggregate many exposures to see
23 where you were with your, you know,
24 transactions with affiliates. So it varied.

25 Q. Would 25% have been the number

1 A. CELINI

2 that you were looking at or would that be too
3 much of a cushion?

4 MR. BROWN: Objection to form.

5 Asked and answered.

6 A. In general, 20% or did you
7 say 25?

8 Q. I said 25.

9 A. 25 would probably be too big of a
10 cushion. But I am sure that -- in any point
11 in time, we may have had a 25% difference
12 from -- away from our 50. So that would be,
13 generally, would have been viewed as, you
14 know, more than enough cushion, but I am
15 sure, again, it varied up and down.

16 Q. Would 35% have been viewed as
17 more than enough cushion?

18 MR. BROWN: Objection to form.

19 A. I think I answered your question.
20 I don't know -- I think I am -- I have made
21 this clear to you that, you know, there is a
22 50% limit. We managed it to make sure that
23 we didn't exceed it. And, you know, some
24 days we were closer to it. Other days we
25 were off. Again, it depended on our asset

1 A. CELINI

2 sale activities. You understand that in the
3 banking world you acquire assets and you also
4 sell them. So at any point in time your
5 asset levels can fluctuate up and down. So
6 it was not a precise measurement that we had.
7 We knew what our top limit was. And the
8 bottom limits could vary.

9 Q. Right. So I understand all of
10 them. I am not asking you about what the
11 asset level was. What I am asking you about
12 is you knew what your top limit was and you
13 said that you observed and monitored to make
14 sure that you had a sufficient cushion, and I
15 am trying to figure out when you say
16 "sufficient cushion," is that 5%, is it 10%,
17 is it 25%?

18 MR. BROWN: Objection to form.

19 A. So I think I understand your
20 question, and I am telling you that the
21 amount of cushion depended on the aggregate
22 exposures we had with our affiliates. And it
23 could change from time to time. Dependent on
24 what -- if we had asset sales activities,
25 what our other native production levels were.

1 A. CELINI

2 In other words, if the bank had it was
3 originating -- if it's own native production
4 levels originations came, were lower, that
5 could create an issue with the limit. So we
6 had to -- so you had to look at the seasonal,
7 cyclical of originations and the asset
8 sale activity. So we didn't, you know, it
9 varied. And I hope you don't have to ask me
10 this again. You know, we made sure we didn't
11 exceed it. And, you know, the bottom limit,
12 you know, it depended on.

13 Q. So you said in about late 2009,
14 when you transitioned to being -- sorry, you
15 said in around late 2009, you were tasked
16 with developing ways to expand the lending
17 capacity of the bank. What were you
18 referring to?

19 MR. BROWN: Objection to form.

20 I think he said he left in 2009.

21 Q. Did I say 2009?

22 A. Yes.

23 Q. Sorry. Let me restate that. In
24 late 2007, when you were tasked with
25 considering ways to expand the lending assets

1 A. CELINI

2 at the bank, what did you come up with?

3 A. We had a variety of different
4 strategies that were laid out and one of the
5 major ones that we -- that we were looking to
6 expand was because of the restrictions
7 required under the Reg W 250.250 limits, it
8 was fairly -- it was a difficult task to
9 monitor your levels and limits. It was a
10 fairly, you know, to stay in compliance. So
11 one of the activities that I was tasked with
12 was to find a way to have a brokering
13 activity done between the affiliate and the
14 banks so the bank could have more of its own
15 origination capacity under the regular --
16 under the rule. So those would count as
17 originations so we would not have to -- we
18 would have a bigger portion. We wouldn't
19 have to watch the 250.250 limit as much.

20 Q. Can you explain what brokering
21 activity was?

22 A. Do you want me to explain sort
23 of --

24 Q. To whom?

25 A. Do you want to understand what a

1 A. CELINI

2 mortgage brokering is or this specific

3 transaction?

4 Q. The specific brokering activity
5 that you -- that was one of the core parts of
6 this initiative.

7 MR. BROWN: Objection to form.

8 A. I believe I understand your
9 question. The brokering -- the brokering
10 strategy that was being evaluated was to have
11 GMAC Mortgage broker loans to GMAC Bank. Or
12 if it was Ally, at the time. I don't know if
13 it was at the time. So -- but the bank. So
14 to have them broker loans so that the bank
15 would underwrite and fund the loans in the
16 bank's name.

17 Q. And whose idea was that?

18 A. A number of people. We had a
19 task force that was tasked to work on that.
20 It was a fairly large group of people.

21 Q. And what was your role in that
22 task force?

23 A. I was the executive -- one of the
24 executive sponsors. I was the bank's
25 executive sponsor.

1 A. CELINI

2 Q. What's it meant to be the
3 executive sponsor?

4 MR. BROWN: Objection to form.

5 A. I was the executive that was, you
6 know, that oversaw the project, the work
7 streams of the various tasks that were
8 assigned there and the different teams that
9 were working on it.

10 Q. Do you know who Joe Cortese is?

11 A. Joe Cortese was the bank's chief
12 accounting officer.

13 Q. Do you recall whether Mr. Cortese
14 had any involvement in this task force?

15 A. I don't recall. I don't recall
16 specifically. He may have. But I don't
17 recall -- because he wasn't -- he came to the
18 bank at a different period of time. So I am
19 not sure if he was directly involved at the
20 project when I was involved with it.

21 Q. And what about, do you know who
22 Cathy Dondzila is?

23 A. Yes, I do.

24 Q. And do you recall whether
25 Cathy Dondzila was involved in this project

1 A. CELINI

2 when you were --

3 A. Not early on in the project. But
4 later on.

5 Q. What was her involvement
6 later on?

7 A. She was a representative from
8 GMAC Mortgage. I think she was one of the
9 finance representatives from the affiliate.

10 Q. And do you recall what her
11 responsibilities were?

12 MR. BROWN: Objection.
13 Objection to form.

14 A. Again, she was one of the finance
15 project members from the affiliate.

16 Q. Do you recall having any
17 discussions with her about the project?

18 A. Atara, I had multiple discussions
19 with almost -- primarily with the project
20 leads, the work stream leads, but we
21 conversed with many people. So on lots of
22 topics. So I am sure I had a conversation
23 with her, or one or two.

24 Q. Was Cathy Dondzila one of the
25 project leads?

1 A. CELINI

2 A. I don't recall. But, again, she
3 was -- she was in the work stream for finance
4 for the affiliate.

5 Q. So did this idea develop into
6 what became known as the broker consumer
7 loans to bank project?

8 A. I don't recall what the end
9 project was. I think we just -- we just
10 called it broker to bank as that was the way
11 I characterized it. I don't know if it had a
12 formal -- that may be somebody else's
13 characterization.

14 Q. I will go with broker to bank
15 because materials I have seen have BCL2B,
16 which is very complicated. Broker to bank is
17 much simpler.

18 A. It was a large initiative. There
19 were a number of stakeholders involved. The
20 project team probably consisted of maybe 30
21 to 40 people at various times based on
22 different -- different approaches.

23 Q. As the executive sponsor, were
24 you actively involved in discussions relating
25 to the broker-to-bank project?

1 A. CELINI

2 MR. BROWN: Objection to form.

3 A. I was actively involved at the
4 high level components. A lot of the
5 discussion was in the weeds at the functional
6 level, systems, ledgers, accounting. So I
7 didn't get involved in the day-to-day
8 granular discussions of the work streams.
9 Only at the top level project level.

10 Q. So were you responsible for
11 developing the major objectives of the
12 project?

13 A. Yes.

14 Q. Who else was involved in
15 developing those objectives with you?

16 A. There was an executive from the
17 affiliate. I am trying to remember. There
18 were a couple -- there were a number of
19 executives of the affiliate. Jim Ferriter
20 was probably the one who ended up being the
21 sponsor on the affiliate side. Again, there
22 were a number of sponsors that were being
23 considered. So he probably ended up being
24 the one at the end.

25 Q. Is there anyone else at the bank

1 A. CELINI

2 who was involved in developing the general --
3 overall objectives of the project?

4 A. We had many. We had full input
5 from the executive team, the CFO, chief
6 accounting officer. You know, we had -- it
7 was -- it was -- my multiple stakeholders at
8 the bank had input into it.

9 Q. And was part of your job
10 collecting their input and then implementing
11 it as part of the project?

12 A. Yes.

13 Q. And what was your understanding
14 of the overall objectives of the project?

15 A. The goal was to develop a
16 regulatory GAAP compliant -- regulatory and
17 GAAP compliant methodology that would allow
18 for the safe and sound brokering of loans
19 from the affiliate within the bank's credit
20 parameters to fund in the bank. Close in the
21 bank's name.

22 Q. And did you have discussions
23 about what the net economic impact of the
24 transaction was supposed to be?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 A. There were numbers of
3 discussions. The primary objective was to be
4 able to have the bank provide liquidity to
5 fund these -- fund the loans within its
6 credit parameters.

7 Q. Mr. Celini, you testified earlier
8 that you were interviewed by the examiner in
9 connection with your activities at the bank;
10 is that right?

11 A. Yes.

12 Q. Do you understand that the
13 examiner issued a report with respect to his
14 investigation into the bank and ResCap?

15 A. I understand that they did, but I
16 have not seen it.

17 Q. Mr. Cortese, I am going to show
18 you a document --

19 MR. BROWN: Celini.

20 Q. Sorry, Mr. Celini. I am reading
21 off the labels. It's not my fault.

22 Mr. Celini, I am going to show
23 you a document that was previously marked in
24 this matter as Cortese Exhibit 8.

25 Mr. Celini, if you could look

1 A. CELINI

2 back to the document that's Bates stamped on
3 the bottom EXAM0015456. It is a Power Point
4 presentation titled Brokering Consumer Loans
5 to Bank Project, Legal Entity Revenue Expense
6 and Broker Fee Proposal, dated November 19,
7 2008.

8 MR. BROWN: I don't want to
9 cause a problem with your deposition.
10 For some reason my document has
11 multiple pages with the Bates stamp
12 ending in '54 and multiple pages with
13 Bates stamp ending in '55.

14 MS. MILLER: Right. Those were
15 produced in native form and native
16 files are given a single Bates number
17 that prints on every page of that
18 document. So those were two native
19 attachments and then there is the
20 document that we are actually looking
21 at, which is the one --

22 MR. BROWN: 56.

23 MS. MILLER: -- that begins
24 EXAM00015456.

25 MR. BROWN: Got it. Thank you.

1 A. CELINI

2 Q. Mr. Cortese, have you ever seen
3 this document before?

4 A. I am not Mr. Cortese.

5 Q. I am going to do that throughout
6 this exhibit.

7 Mr. Celini, have you seen this
8 document before?

9 MR. BROWN: By "this document,"
10 are you referring to the entire E-mail
11 package that is Cortese Exhibit 8
12 dated February 28, 2012, or just the
13 Page '456?

14 MS. MILLER: I'm just referring
15 to the Power Point document that I
16 identified on the record, that begins
17 at page EXAM00015456.

18 MR. BROWN: Does that Power
19 Point go through the end of the
20 document? Just so I know what
21 document we are talking about.

22 MS. MILLER: It ends at
23 EXAM00015476.

24 MR. BROWN: Thank you.

25 A. Atara, can you restate your

1 A. CELINI

2 question now that we have gotten that squared
3 away.

4 Q. Yes. Mr. Celini, have you ever
5 seen the Power Point presentation titled
6 Brokering Consumer Loans to Bank Project
7 dated November 19, 2008?

8 A. No.

9 Q. Mr. Cortese, if you can --
10 MR. BROWN: Celini.

11 Q. Sorry. It's going to be a longer
12 day than I thought.

13 Mr. Celini, if you could turn to
14 the page ending in the Bates stamp '459
15 titled Summary. It says "The GMAC Mortgage
16 broker will have a lending relationship with
17 GMAC Bank." Is that a true statement under
18 the broker-to-bank project?

19 A. Well, GMAC Mortgage was to have a
20 brokering relationship to the bank. So you
21 said lending relationship. But it would be a
22 brokering relationship as the objective. So,
23 yes, GMAC Mortgage was to be the broker and
24 the bank was to be the lender.

25 MR. BROWN: Lines 9 through 10?

1 A. CELINI

2 MS. MILLER: Yes, I misread it.

3 It is a reading problem on my end.

4 Let me clean that up. Thank you
5 for --

6 A. More coffee. That's what I
7 always tell them.

8 Q. We might need to take a break.

9 Mr. Celini, looking at the
10 summary on the page ending in Bates stamp
11 '15459, it says "GMAC Mortgage broker will
12 have a brokering relationship with GMAC Bank
13 (lender.)" Is that an accurate statement
14 under the broker-to-bank project?

15 A. Yes.

16 Q. It then says that "GMACM will
17 enter into a broker agreement with GMACB
18 where GMACM will perform origination and
19 processing services and submit loan
20 application packages."

21 Is that also consistent with your
22 understanding of the project?

23 A. Yes.

24 Q. So we are clear, GMACM is
25 referring to GMAC Mortgage, right?

1 A. CELINI

2 A. Yes.

3 Q. And GMAC B is GMAC Bank?

4 A. That's correct.

5 Q. And looking down to bullet number
6 4, it says "GMAC Bank will recognize fee
7 income, net carry, incur broker fees and
8 underwriting expenses." Is that also
9 consistent with your understanding?

10 A. It's -- the primary objective of
11 this activity was for the bank to fund loans
12 in a regulatory compliant way through a
13 brokering activity. So in -- an make sure it
14 recognized all of its income and expenses
15 under GAAP and that it complied with the
16 regulations as it did it. So fee income
17 would be part of it. Net carries is
18 something that needs to be defined. You
19 know, that can have different
20 interpretations. But it would definitely
21 incur broker fee in underwriting.

22 Q. Okay. Mr. Celini, do you have an
23 understanding of what the Cost Basis for GMAC
24 Mortgage's purchases of the loans from the
25 bank was supposed to be?

1 A. CELINI

2 A. I have an understanding of what
3 the term Cost Basis professionally. But I
4 don't -- didn't have privy to all of the, you
5 know, the basis and methodology used by the
6 affiliate. It wasn't my responsibility to
7 oversee those.

8 Q. Okay. Looking at the next page
9 in the Power Point presentation -- before we
10 get there. Do you understand that --

11 MR. BROWN: It's a problem with
12 my mic. It fell off. You are fine.
13 He is just trying to tell me to put on
14 my mic.

15 Q. Is there a difference -- sorry.
16 Strike that.

17 Can there be a difference between
18 GAAP accounting entries and a net economic
19 impact of a transaction?

20 MR. BROWN: Objection to form.

21 A. I am not sure I understand -- I
22 am not sure I understand where you are going
23 with that. But, no, I don't quite
24 understand. So GAAP accounting is the law,
25 right. We have to -- you would have to

1 A. CELINI

2 follow in the situation. So -- and the other
3 term that you said, I recall, could be again,
4 defined. It is net economic impact. I don't
5 know what that would contain, right.

6 Q. So let me give you an example.

7 If GMAC Bank originates a loan and collects
8 \$10 of fees related to that loan and defers
9 the \$10 of fees under FAS 91 and then sells
10 that loan to GMAC Mortgage, do you have an
11 understanding of what, from a GAAP accounting
12 perspective, the bank would show as income?

13 A. So, yes. In that example, as you
14 explained it, the -- whatever deferrals were
15 booked as, under FAS 91 would need to be
16 reversed when the loan was sold.

17 Q. Okay. And what do you mean --
18 how would -- how from a technical accounting
19 and ledger entry perspective would you
20 reverse the FAS 91 deferrals?

21 MR. BROWN: Objection to form.

22 A. You actually want me to explain
23 debits and credits here?

24 Q. I do.

25 A. So when you defer the \$10 fee

1 A. CELINI

2 under FAS 91, you would debit the deferred
3 fee account, and when you sell the loan --
4 and then that deferral would be accreted into
5 income over the duration of the loan asset,
6 and at some point in time, if the loan was
7 sold before that duration had been, you know,
8 between the end of the loan period, loan's
9 life on the balance sheet, you would credit.
10 So reverse out the deferred loan fee and
11 debit, you know, an expense or another
12 revenue account. In this case it would be a
13 revenue account, as you would credit the
14 asset and debit the revenue account for this.
15 If you want, I can draw T accounts and map
16 that out.

17 Q. I might give you a piece of
18 paper.

19 A. Okay.

20 Q. I am going to hand you a piece of
21 paper, which, when you are done marking it,
22 we will mark it as Celini Exhibit 1. Can you
23 map out what you were just describing?

24 A. So I have done -- on this account
25 I have shown T accounts for when the loan is

1 A. CELINI

2 booked or funded, how it is booked, debits,
3 credits, cash, loan and fee.

4 Q. Can you describe the numbers, the
5 entries and the numbers?

6 A. Using your example, if the loan
7 was originated at -- for 100 and it had a
8 \$10 fee -- fee incurred, that you would book
9 the loan at 100. You would debit loans at
10 100. You debit deferred fees for 10 and
11 you'd credit cash for 110, for the amount of
12 the cash outflow.

13 Transaction 2 would be loan sale.
14 So at that time, you would credit the UPB of
15 the loan, whatever it was remaining. But in
16 your example, 100, okay. You would
17 reverse -- you credit the loan fee for 10 and
18 you would -- again, depending on the period
19 of whether this occurred. If it occurred the
20 same day, you'd take the whole amounts out.
21 But if it occurred one month later, it would
22 be whatever, less the deferral would be. So
23 if you -- in this case, let's make it nine.
24 Make it clear for your example. You would
25 have -- when you book -- when you book the

1 A. CELINI

2 fee income, so you take off -- you credit one
3 in this example. Cash would be -- let's just
4 use 109 in the example. So that's what would
5 come out, 109. So you would accrete the
6 income of one so 109.

7 Q. Then in your example -- thank
8 you. We will mark this as Celini Exhibit 1,
9 please.

10 (Whereupon, Celini Exhibit 1,
11 Hand drawn T accounts example was
12 marked for identification as of this
13 date by the Reporter.)

14 Q. In your example, when you are
15 referring to fees, are those fees collected
16 by the bank or paid by the bank?

17 A. It would be paid by the bank, in
18 this case, as part of the loan. The loan
19 origination. The amount of the cash that
20 went out on the first loan would be 110.

21 Q. So not -- not points collected by
22 the bank from the consumer in connection with
23 the origination?

24 A. So the accounting for loan
25 acquisition is a complex matter, and what I

1 A. CELINI

2 just did is I just used an example of fees
3 paid by the bank in case of showing the
4 fee -- the cash was going out. So the
5 accounting for the UPB of origination fees
6 and the various costs associated with, you
7 know, a loan origination is a complex matter.
8 I am not prepared to map out all the entries
9 here to do the activities that would happen.
10 If there were servicing book accreted,
11 there's a fairly complex activity.

12 Q. Understood. And you put in your
13 example loan sale at 109.

14 A. Um-hum.

15 Q. That was assuming that the loan
16 is being sold at UPB plus the value of any
17 fees that were also outlaid by the bank,
18 right?

19 A. It's just for illustrative
20 purposes. I just used an example of 109.
21 Loans can be sold at premiums or discounts.

22 Q. I am just trying to make sure we
23 clearly understand the example. So the loan
24 sale, in this example, is 109, which is,
25 basically, equivalent to the UPB and the

1 A. CELINI

2 remaining deferred fee?

3 A. In this example, I just used a
4 simple example of saying that you would have
5 accreted one of the ten of the deferred fee
6 into income. That's all. So it's just an
7 example. Loans can be sold at premiums or
8 discounts in any activity. So the amounts
9 could change. It could have been sold at 115
10 and had a different economic impact. So I
11 just used as an example for illustrative
12 purposes. Okay.

13 MS. MILLER: I would like to
14 mark as Celini Exhibit 2, a document
15 which is excerpts of the report of
16 Arthur J. Gonzalez as examiner in this
17 matter. But only -- it is a 2,000
18 page report. Only those portions
19 which reference you.

20 (Whereupon, Celini Exhibit 2,
21 Excerpts of the Report of Arthur J.
22 Gonzalez was marked for identification
23 as of this date by the Reporter.)

24 MR. BROWN: What have you
25 excerpted here? Okay. So you have

1 A. CELINI

2 just cherry picked pages, that's what
3 it appears to be?

4 MS. MILLER: It includes the
5 entirety -- I am going to focus on
6 Section B starting on page V 89 titled
7 GMAC Mortgage Bank Contracts With Ally
8 Bank Government Loan Sales, Brokerage,
9 Servicing and Related Derivative
10 Transactions, and I believe the
11 entirety of that section is included.

12 MR. BROWN: Atara, I will note
13 for the record that this does not
14 appear to be an excerpt from the
15 examiner's report as the examiner
16 produced his report. There is maybe
17 highlighting or something in multiple
18 places throughout this document. And
19 I can assure you when I looked at the
20 examiner's report, there was no
21 highlight in any of those 2200 pages.

22 MS. MILLER: Right. If you
23 would stop asking me questions and let
24 me identify --

25 MR. BROWN: I didn't ask a

1 A. CELINI

2 question. Just made a statement for
3 the record.

4 MS. MILLER: Right. So if you
5 would stop making statements on the
6 record and let me properly identify my
7 exhibit, I would explain that.

8 MR. BROWN: I gave you a couple
9 opportunities. I didn't hear anything
10 about the highlighting. I wanted the
11 record to be clear. If you want to
12 make a statement on the record, go
13 for it.

14 Q. Mr. Celini, I have given you an
15 excerpt of the examiner's report in which
16 we've highlighted portions where the examiner
17 has referenced specifically statements made
18 by you or in which he has statements in which
19 he supports with references to statements by
20 you.

21 Have you had any discussions with
22 anybody about the examiner's report before
23 today?

24 A. No.

25 Q. Do you know what the examiner

1 A. CELINI

2 concluded?

3 A. I have no idea.

4 Q. What topics did the examiner ask
5 you about?

6 MR. BROWN: Objection to form.

7 A. There was a fairly wide range of
8 discussions. I don't recall all of them. We
9 talked about affiliate agreements. We talked
10 about my background. My tenure. So it
11 covered a very wide range of topics.

12 Q. Did you speak to the examiner
13 about the broker-to-bank project?

14 A. I believe it was included in the
15 discussion.

16 Q. Mr. Celini, do you have an
17 understanding of what revenues the bank was
18 supposed to retain in the brokering to bank
19 project?

20 MR. BROWN: Objection to form.

21 A. Just trying to -- let me try to
22 understand it. So what do you mean? Do I
23 have an understanding of the broad terms?
24 Can you give more clarification?

25 Q. Do you have an understanding of

1 A. CELINI

2 the broad terms?

3 A. Yes.

4 MR. BROWN: Objection to form.

5 Q. Overarching principles?

6 A. Yes.

7 Q. What were those -- what was that
8 understanding?

9 A. The brokering activity was to
10 generate, you know, bring assets to the bank
11 for us to originate in our name with our
12 funding. And that we would follow GAAP in
13 the recordation of those -- that funding
14 activity. You know, as prescribed by our
15 chief accounting officer. And that it would
16 be Reg W compliant. It was a sourcing
17 activity. A way -- you know, to get loans
18 recognized. So loans should have been funded
19 by the bank in order for us to, you know, to
20 get those assets and utilize our liquidity.

21 MS. MILLER: Let's take a quick
22 break.

23 THE VIDEOGRAPHER: We are now
24 going off the video record. That
25 concludes tape number one. The time

1 A. CELINI

2 is 10:12.

3 (Whereupon, a recess was held.)

4 THE VIDEOGRAPHER: We are now
5 back on the video record. This
6 commences tape number 2, November 8,
7 2013. The time is 10:29.

8 Please continue.

9 BY MS. MILLER:

10 Q. Good morning, Mr. Celini. So I
11 handed you, before we broke, a document that
12 we have marked as Celini Exhibit 2, which is
13 certain excerpts of the examiner's report in
14 this matter with portions that are
15 specifically referencing you highlighted.

16 I would like you to turn, if you
17 could, to page V 124, which is also page 124
18 of 175 on the top. And there is a section
19 here that's titled Genesis of the Brokering
20 and Consumer Loans to Bank Project. And in
21 this report, starting after footnote 629, the
22 second highlighted portion, it says "The
23 250.250 program sales to the bank were
24 reaching this limit in the summer and fall of
25 2008 and in at least one instance the limit

1 A. CELINI

2 was exceeded."

3 Is that the same 250.250 limit
4 that we were discussing earlier today?

5 MR. BROWN: Objection to form.

6 A. Yes.

7 Q. And then it goes on to say,
8 "However, loans brokered to the bank by GMAC
9 Mortgage and then originated by the bank in
10 its own names would not be subject to this
11 limit."

12 That's consistent with your
13 testimony earlier this morning, right?

14 A. That's correct.

15 Q. And then it says, "Further,
16 switching to a broker model not only offered
17 the prospect of increase in the number of
18 loans which could be funded through the bank,
19 but the projected savings to the GMAC
20 Mortgage of 10 to 21 basis points over loans
21 originated by GMAC Mortgage but would
22 increase the volume of MSRs that could be
23 retained by the bank."

24 Is that also an accurate
25 statement?

1 A. CELINI

2 MR. BROWN: Objection to form.

3 He has already testified he hasn't
4 seen the document or the report, for
5 that matter.

6 MS. MILLER: I am asking him
7 whether that statement is accurate
8 based on his knowledge, understanding
9 and personal involvement in the
10 broker-to-bank project.

11 MR. BROWN: Objection to form.

12 A. So, again, I have only seen this
13 now. I remember we talked at the, you know,
14 the examiner's discussion, we talked about a
15 lot of things. So these -- these terms that
16 you show me so far are consistent with what
17 I -- we talked about with the examiner.

18 Q. Okay. And then it says,
19 "S. Celini," and I think that's referring to
20 you, "the sponsor of the broker-to-bank
21 project for the bank noted, quote, 'There was
22 very widespread knowledge that the affiliate
23 had high cost liquidity and no liquidity and
24 that if we didn't do this -- if we didn't
25 find a way to do this, that there would be a

1 A. CELINI

2 bad outcome on the other side.'" "

3 Do you see that?

4 A. I see that in the report.

5 Q. Do you recall making that
6 statement to the examiner?

7 A. I don't recall the specific
8 wording. We talked about a lot of things in
9 the context, so we talked about a lot of
10 things. I don't recall making that specific
11 statement. But if it's here, obviously, it
12 was recorded as such.

13 Q. Sitting here today, do you
14 believe that statement to be true?

15 A. Be true -- I mean, yeah, this was
16 2007. The market was in turmoil and in 2008,
17 Lehman -- we all know what happened. So the
18 affiliate was definitely facing a liquidity
19 crunch.

20 Q. And then it continues, "The
21 project was made a priority." Do you believe
22 that the project was -- the broker-to-bank
23 project was a priority at this time in late
24 2007?

25 A. Yes, it was. Like I said, there

1 A. CELINI

2 was large project teams, multi-functions, all
3 working on it as a priority.

4 Q. And then the examiner says that
5 there was an -- that "There was a project
6 team assembled under the direction of
7 project -- of bank project leader and Celini
8 subordinate Debra Scott."

9 Who is Debra Scott?

10 A. She was a project manager who
11 worked for me at GMAC Bank.

12 Q. What was her specific involvement
13 in the broker-to-bank project?

14 A. She was the project manager for
15 the bank on the initiative.

16 Q. And would you say that she was
17 the person at the bank most familiar with all
18 aspects of the broker-to-bank project?

19 A. No, I wouldn't say that. She was
20 the project manager managing the work streams
21 that had a lot of technical inputs. So the
22 project manager trying to keep people on task
23 and organized is her primary role.

24 Q. So she had an understanding of
25 what everybody was supposed to be doing and

1 A. CELINI

2 was actually doing in the project, right?

3 MR. BROWN: Objection to form.

4 A. I think I answered that one. She
5 is the project manager. I am trying to be as
6 explicit -- I mean, doesn't -- not an expert
7 in anything other than keeping people on
8 track and focused.

9 Q. And a requisite of being able to
10 keep people on task and focused is having an
11 understanding of what people are supposed to
12 be doing, right?

13 MR. BROWN: Objection to form.

14 A. There are defined work stream
15 tasks. Whether they be finance, treasury,
16 accounting, systems. You know, this was a
17 huge endeavor. So she knew that what the
18 work streams were as we defined them in the
19 project. She doesn't know everything that's
20 happening with IT. She isn't an expert in IT
21 or accounting or anything like that. So she
22 knew the work streams and their deliverables.
23 I answered that a few times.

24 Q. Turning now to page B 126 in the
25 report. I am going to also hand you a

1 A. CELINI

2 document that was previously marked as
3 Cortese Exhibit 4. I am going to try not to
4 call you Mr. Cortese throughout this portion
5 of the examination.

6 Mr. Celini, I have handed you a
7 document that was previously marked as
8 Cortese Exhibit 4, which the upper portion of
9 the exhibit is an E-mail chain from 2012 that
10 you were not involved in. But if you look
11 down to the fourth E-mail down from the top
12 in the chain at the bottom of the page marked
13 EXAM00003975, it is an E-mail from
14 Jill Horner to you and Mr. Whitehead copying
15 Debra Scott and Elizabeth Manafie (phonetic)
16 from September 3rd, 2008.

17 Do you see that?

18 A. I see that E-mail, yes.

19 Q. And the next E-mail down, so
20 going back chronologically in that chain is
21 an E-mail from you to Mr. Whitehead copying a
22 number of people from September 2008. Do you
23 see that?

24 A. Yes.

25 Q. And in it, in that E-mail, you

1 A. CELINI

2 say "Matt, see my comments in red below."

3 Do you understand that to mean
4 that you provided interlineated comments in
5 response to Mr. Whitehead's E-mail that's the
6 first E-mail in the chain, also from
7 September 2, 2008?

8 A. Yes.

9 Q. I searched the documents that
10 were produced to us in this matter, and we
11 were not provided with a color copy of this
12 E-mail, which makes it somewhat less helpful
13 to follow exactly what you've added in
14 response to Mr. Whitehead's questions and
15 what was Mr. Whitehead's text.

16 But if you look at the examiner
17 report, I believe he has italicized those
18 portions -- well, maybe not. I guess we have
19 to see if we can figure out what you added in
20 response to Mr. Whitehead's comments. Just
21 looking at Cortese Exhibit 4, and looking at
22 the first E-mail in the chain -- sorry, the
23 bottom E-mail in the chain, first
24 chronologically, last in the document, from
25 Mr. Whitehead to you dated September 2, 2008,

1 A. CELINI

2 but which includes your comments. It says
3 "Al, based on our conversation on Friday, I
4 wanted to confirm that only revenue the bank
5 is going to recognize is the net carry, i.e.,
6 interest income/expense. All of the other
7 income/fees, i.e., origination fee, loan
8 discount fee, income (points, rate lock fee,
9 overage/shortage/subsidies, underwriting fee,
10 other ancillary fees) will be payable to the
11 bank (lender) from the borrower and not the
12 mortgage company and will be capitalized
13 within the Cost Basis of the loan and
14 essentially sold to mortgage at the Cost
15 Basis as the purchase price."

16 Is it your understanding that you
17 responded "CORRECT" to that inquiry in all
18 caps immediately after the portion that I
19 read into the record?

20 A. Just give me sometime to read
21 here. Reading this E-mail as it has been
22 laid out, the capitalized term is correct.
23 Looks like my response is to these
24 statements, yes.

25 Q. And then the E-mail continues and

1 A. CELINI

2 says, "All the traditional rev/EXP
3 reimbursement items that normally be
4 recognized by the originator be borne by GMAC
5 B and capitalized into the loan basis
6 accordance with GAAP. These items will not
7 reside on the bank's P&L, deferred onto B/S
8 and will be recognized on the mortgage P&L
9 once the loan is sold to GSEs."

10 Do you know whether that's part
11 of your response?

12 A. No, that's not part of my
13 response.

14 Q. Okay.

15 A. I believe my response is only to
16 the capitalized activity to that -- in that
17 statement. I believe the rest of this was
18 Matt Whitehead's commentary.

19 Q. Okay. So Matt Whitehead
20 continues three lines down and says "This
21 would effectively make the bank P&L neutral
22 to the way it currently conducts business and
23 would act essentially as a funder of loans
24 and not impacted by any market or interest
25 rate movement." And then it says "correct"

1 A. CELINI

2 in square brackets after that.

3 Is it your understanding that the
4 "correct" in brackets is also your response
5 to Mr. Whitehead's comment?

6 A. Give me a moment to read so I can
7 read the context of it. It is complex.

8 Q. Sure.

9 A. I believe the bracketed term is,
10 yes, my response, correct.

11 Q. Sitting here today, do you
12 believe those are accurate statements and
13 responses?

14 MR. BROWN: Objection to form.

15 A. I need you to clarify that.

16 Q. Do you have any reason, sitting
17 here today, to believe that your response
18 "correct" was inaccurate?

19 A. It is really important to
20 understand this was a large project, had
21 multiple scenarios and this E-mail, as
22 presented here, could have been one of the
23 scenarios that was presented that was being
24 discussed through the -- through the project
25 team. So we had several scenarios being

1 A. CELINI

2 worked through. So this may have been my --
3 this document -- my statements here as to
4 correct were in the context of this document
5 and the scenario that we probably were
6 working through here. So the ultimate
7 resolution, this may or may not have been
8 what the project ended up implementing.

9 Q. Any reason to believe that this
10 is not what the project ended up being
11 implemented?

12 A. I don't believe this is what the
13 end up -- I mean, let me try to -- do I have
14 any reason to believe this is not, I do
15 believe there were at least five or six other
16 scenarios that we worked through. And also
17 have to understand that some of this was for
18 management reporting, not necessarily legal
19 entity reporting comments. So GAAP rules,
20 you know, for the legal entities, are the
21 prevailing activity. So a lot of these
22 commentaries were -- here were talking about
23 different management reporting treatments.

24 Q. So if I understand what you are
25 saying is that the management reporting

1 A. CELINI

2 treatment might view a transaction as not
3 having an impact on the bank's income
4 statement even though there are GAAP entries
5 on the bank's income statement; is that
6 right?

7 MR. BROWN: Objection to form.

8 A. You need to clarify that. Try
9 that one more time.

10 Q. If the bank collects income
11 related to a loan originated but that income
12 is then offset by a reduction in the purchase
13 price -- in the sale price of the mortgage,
14 from a management perspective, that's a no
15 gain no loss from the bank; is that right?

Plaintiffs' Objection
73:10-74:4

16 MR. BROWN: Objection to form.

Lack of foundation
(FRE 602, 901), lack of
personal knowledge/
speculative (FRE 602)

17 A. I think you need to be -- first
18 off, GAAP is the prevailing activity that
19 needs to be recognized on the legal entities.
20 Management -- management reporting for
21 segment -- for segment reporting for in a
22 business unit evaluations can look at a lot
23 of components. So -- and again, this is, you
24 are pointing to me one E-mail in probably
25 what was several thousands that were

1 A. CELINI

2 exchanged on several scenarios. So, I mean,
3 that could -- that could have been one of the
4 context. But I can't tell you for certain.

5 Q. Outside of the context of what
6 did or didn't happen. As a general
7 management and accounting matter, if a
8 bank -- if the bank originates a loan with a
9 \$100 UPB, and the bank collects \$10 in points
10 from the consumer, and the bank then sells
11 that loan to GMAC Mortgage for \$90 dollars,
12 would the bank's balance sheet -- sorry,
13 would the bank's P&L recognize \$10 of income
14 collected from the consumer?

15 MR. BROWN: Objection to form.

16 A. You know, you are talking about a
17 hypothetical situation?

18 Q. Right.

19 A. I don't want to proffer -- you
20 know, in that example, I don't see how it is
21 relevant to what we are talking about here.

22 Q. Based on your -- okay. What's
23 your understanding of how the bank actually
24 accounted for -- sorry. Let me step back.

25 When the bank originated a loan,

1 A. CELINI

2 what fees, costs and expenses were associated
3 with it?

4 MR. BROWN: Objection to form.

5 A. I answered you before. First
6 off, the accounting for mortgage loan
7 activities is a complex and, you know,
8 complex activity governed by multiple
9 statements underneath GAAP and underneath
10 various scenarios. Depends whether something
11 is originated at a discount, premium, whether
12 you have fees deferred, non-deferred.
13 Whether there is a servicing asset that's
14 created or not. So it is a complex activity.
15 I am not prepared to give you a recitation of
16 the GAAP accounting activities that are going
17 to need to be recognized in this scenario.

18 Q. I don't think I asked you about
19 GAAP accounting. Let me step back, if I used
20 a term that you are saying is a technical
21 term.

22 What fees would the bank have
23 associated with originating a loan?

24 MR. BROWN: Objection to form.

25 A. So in general, they can be

1 A. CELINI

2 numerous types. There can be origination
3 fees. There can be processing fees. There
4 can be appraisal fees. There is a long list
5 of fees that are out there and their
6 treatments for recognition are complex and
7 vary depending on what they are. They can be
8 a premium, a discount. I believe I answered
9 this question just before in terms of what
10 fees and types of activities could be there.

11 Q. You said there are a lot. I am
12 asking you do you have a list of them?

13 MR. BROWN: Objection to form.

14 Are you asking for expenses to the
15 bank, too, or just fees that a
16 borrower pays to the bank? I'm just
17 not clear, sorry.

18 MS. MILLER: I am going to ask
19 all of them.

20 So right now, I am looking
21 specifically for fees that are paid to
22 the bank.

23 MR. BROWN: Objection to form.

24 A. I am trying to understand context
25 of fees. You have discount points. And, you

1 A. CELINI

2 know, again, premium -- premium or discount
3 that could come. Again, I am not prepared to
4 give you a complete recitation of all those
5 activities.

6 Q. And what expenses would the bank
7 have related to the origination of a loan?

8 MR. BROWN: Objection to form.

9 A. Expenses, typically -- typically
10 that would be incurred would be the cost for,
11 you know, underwriting evaluation, cost for
12 any direct expenses incurred in the
13 origination, and those could be many, right.
14 So those are the typical types of things you
15 would do. Appraisals. You know, credit
16 reports. People to check. You know, make
17 sure the fees have been validated. So there
18 is many fees that would be expenses that
19 would be incurred in originating a loan.

20 Q. Mr. Celini, what did you do to
21 prepare for your deposition today?

22 A. I arrived here and showed up to
23 talk to you about my recollections and
24 knowledge from this time back in several
25 years ago. So I have not -- I mean, I

1 A. CELINI

2 prepared by -- the only thing I did was I can
3 say is for the examiner report that, you
4 know, when I was here to testify in front of
5 the examiners. That's the only time I have
6 thought about, today and that examiner
7 report, is the last time I have talked or
8 thought about these activities.

9 Q. So you haven't spoken with any
10 counsel for Ally or the debtors in connection
11 with your deposition today?

12 A. No.

13 MR. BROWN: If you want to take
14 a short break, I will tell Mr. Celini
15 about what he can and cannot reveal in
16 light of the privilege. I think he is
17 slightly confused by your question.

18 A. Yeah, I mean, can --

19 Q. Did you meet with --

20 A. Clarify, please.

21 Q. Did you meet with any lawyers to
22 prepare for your deposition today?

23 MR. BROWN: Like I said, I am
24 willing to take a very short break,
25 talk to Mr. Celini and tell him what

1 A. CELINI

2 he can and cannot reveal pursuant to
3 the privilege.

4 THE WITNESS: I would like to
5 take a break, please, that way I can
6 have that discussion.

7 MS. MILLER: I have a question
8 pending, and I will instruct you that
9 unless you are being directed by your
10 lawyers not to answer my question, you
11 can answer my question whether or not
12 you met with lawyers to prepare for
13 your deposition today.

14 MR. BROWN: I think what he is
15 telling you is he needs to inquire
16 about what he can reveal and not
17 reveal subject to the privilege.

18 MS. MILLER: Are you instructing
19 him not answer the question?

20 MR. BROWN: No, I am not.

21 MS. MILLER: So he can answer
22 the question. It is a yes or no
23 question. He can answer it.

24 MR. BROWN: If he doesn't know
25 whether he can answer affirmatively or

1 A. CELINI

2 not without revealing privileged
3 information, he has already asked and
4 you said --

5 THE WITNESS: I would like to
6 take a break.

7 MS. MILLER: I am telling you --
8 you should instruct him to answer the
9 question. That's the appropriate
10 response here. It is not to take a
11 break to direct your witness and to
12 coach him.

13 MR. BROWN: I am not going to
14 coach him. I'm going to tell him the
15 extent of the privilege.

16 MS. MILLER: You can tell it to
17 him right here on the record.

18 MR. BROWN: I will tell him that
19 off the record.

20 MS. MILLER: I don't understand.

21 Q. I have asked you a question. Are
22 you refusing to answer my question?

23 A. My answer is I would like to take
24 a break so I can fully understand the context
25 for with input from my counsel.

1 A. CELINI

2 Q. I have asked you a yes or no
3 question --

4 A. No.

5 Q. -- about whether you met with
6 your lawyers. No?

7 A. I am answering that I would like
8 to take a break so I can get clarity here as
9 to what my, you know, the appropriate, you
10 know, privileged requirements are. I just
11 don't understand your question and I want
12 clarity.

13 MR. BROWN: Mr. Celini, so she
14 can get the record she wants, you can
15 answer that question, whether you met
16 with counsel with a yes or a no. And
17 then you can take a break and we can
18 discuss the scope of anything else
19 that she can ask you and what you
20 should be able to reveal in response
21 to those questions. But you can
22 answer the existing question whether
23 you met with counsel or not with a yes
24 or a no.

25 Q. I am going to ask it again.

1 A. CELINI

2 Mr. Celini, did you meet with counsel to
3 prepare for your deposition today?

4 A. Yes.

5 Q. And how long did you meet with
6 counsel for?

7 A. A couple of hours.

8 Q. Okay.

9 MS. MILLER: We can go off the
10 record and take a break.

11 THE VIDEOGRAPHER: Off video,
12 10:53.

13 (Whereupon, a recess was held.)

14 THE VIDEOGRAPHER: Back on,
15 10:55.

16 BY MS. MILLER:

17 Q. Mr. Celini, are you represented
18 by counsel here today?

19 A. Yes.

20 Q. And who is your lawyer?

21 A. Counsel who is to my right,
22 Judson.

23 Q. Did you sign an engagement letter
24 with them?

25 A. No.

1 A. CELINI

2 Q. Did they ask you if you would
3 like to retain them as your lawyers?

4 A. No.

5 MR. BROWN: I'll give you a
6 representation on the record that, as
7 a former employee of Ally Bank,
8 Mr. Celini does have an agreement with
9 Ally. Not specifically with Kirkland.
10 I will represent that to you on the
11 record.

12 Q. Mr. Celini, are you paying your
13 own legal fees and expenses related to this
14 deposition?

15 A. Yes.

16 Q. So you are paying Kirkland and
17 Ellis?

18 A. Let me clarify. I am paying for
19 my own expenses. I am not paying fees for --
20 to any attorneys.

21 Q. And do you have an understanding
22 of who is paying those fees?

23 A. My former employer, that would be
24 Ally.

25 Q. And how many times did you meet

1 A. CELINI
2 with attorneys from Kirkland in connection
3 with your deposition here today?

4 A. Once.

5 Q. Did you have telephonic
6 conversations in addition to that meeting?

7 A. One phone call.

8 Q. And how long was the phone call?

9 A. Very brief. Just to setup an
10 appointment.

11 Q. And did you meet in person?

12 A. Yes.

13 Q. And when did you meet?

14 A. Yesterday.

15 Q. And did you review documents?

16 A. We talked about many things. We
17 had --

18 MR. BROWN: Mr. Celini, don't
19 reveal the subject matter of our
20 conversation. You can answer her
21 question whether you reviewed
22 documents or not with a yes or a no.

23 A. Yes.

24 Q. And did you discuss any prior
25 testimony that's been given in this action?

1 A. CELINI

2 A. Thinking about it yesterday, no.

3 Q. Do you understand that
4 Mr. Cortese was deposed in this matter?

5 A. I am not aware of anybody else
6 who has been involved in this.

7 Q. And did you discuss -- did you
8 discuss the examiner's report with counsel
9 yesterday?

10 A. No.

11 Q. Okay. How many documents did you
12 review with counsel?

13 MR. BROWN: You can answer that
14 with a number as best you can recall.

15 A. Two or three.

16 Q. And did any of the documents that
17 you reviewed specifically refresh your
18 recollection about anything?

19 A. I mean, they refreshed it since,
20 you know, since the time of my report to the
21 examiner. That's all.

22 Q. And what documents did you look
23 at that refreshed your recollection?

24 A. Gosh, what did we look at? We
25 looked at a bunch of them, like I said. So

1 A. CELINI

2 probably the one that comes to mind is the
3 Master Mortgage Loan Purchase and Sale
4 Agreement.

5 Q. What specifically were you
6 refreshed by in looking at the MMLPSA?

7 MR. BROWN: Objection to form.

8 A. Just we -- it's been a number of
9 years, counselor, since I have dealt with
10 these things. So just reviewed it to
11 remember what, you know, looked at what the
12 terms and conditions were.

13 Q. And was the document -- this
14 E-mail chain that I marked as Cortese Exhibit
15 4, a document that you reviewed that
16 refreshed your recollection?

17 A. No, I don't recall, no. I don't
18 recall seeing this document.

19 Q. And what about the Power Point
20 that had previously been marked as Cortese
21 Exhibit 8, is that a document that you
22 reviewed that refreshed your recollection?

23 A. Let me see which one that is.

24 MR. BROWN: The one at page EXAM
25 '15456; is that right?

1 A. CELINI

2 MS. MILLER: Yes.

3 A. So, this document was shown to me
4 yesterday.

5 Q. Did it refresh your recollection
6 about anything?

7 A. No. I am sorry, I had my -- so,
8 no, I gave the same answer that I --

9 MR. BROWN: Mr. Celini, don't
10 reveal privileged communications. She
11 is not asking for that. She is simply
12 asking whether this refreshed your
13 recollection. You can answer that
14 with a yes or a no.

15 A. No.

16 Q. What other documents did you look
17 at other than the MMLPSA that refreshed your
18 recollection?

19 A. I don't recall. We looked at a
20 bunch.

21 Q. Did you review affiliate
22 transaction memos that refreshed your
23 recollection?

24 A. I believe there was one in there,
25 so yes.

1 A. CELINI

2 Q. And do you recall which ones
3 specifically?

4 A. No.

5 Q. Were there any e-mails that you
6 reviewed that refreshed your recollection?

7 A. No.

8 Q. Any other documents or types of
9 documents that you reviewed that refreshed
10 your recollection?

11 MR. BROWN: Objection. Asked
12 and answered.

13 A. No.

14 Q. Did you review the MSR swap
15 agreements?

16 A. That could have been inside
17 there. Again, we met -- it wasn't
18 extensively. So we looked at that -- that
19 may have been in there. I don't recall. Let
20 me answer your question, I don't recall if
21 that was in there.

22 Q. Mr. Celini, do you recall which
23 MMLPSA you reviewed that refreshed your
24 recollection?

25 A. No.

1 A. CELINI

2 Q. Do you recall whether it was the
3 MMLPSA that was amended and restated as of
4 July 1st, 2008?

5 A. No, I don't recall if that was
6 the specific document.

7 Q. I am going to hand you a document
8 that's previously been marked as Cortese
9 Exhibit 2. It's the Master Mortgage Loan
10 Purchase and Sale Agreement between GMAC Bank
11 and GMAC Mortgage LLC amended and restated as
12 of July 1, 2008. Bates numbered ALLY_0201210
13 through '1225.

14 Mr. Celini, was anyone other than
15 Mr. Brown in attendance at the meeting either
16 in person or by telephone yesterday?

17 A. Yes.

18 Q. Who was that?

19 A. (Indicating.)

20 MR. BROWN: Jodi.

21 Q. Anyone else?

22 A. No, sorry.

23 Q. Mr. Celini, I have handed you
24 what has been marked as Cortese Exhibit 2.
25 Does this refresh your recollection about

1 A. CELINI

2 whether it is the July 1, 2008, MMLPSA that
3 you reviewed yesterday?

4 A. So, this may have -- this may
5 have been one that I looked at yesterday. I
6 mean, we looked, like I said -- so, no. Wait
7 a minute. Can I get clarification? Let me
8 step back here.

9 So we had a number of documents.
10 So this document, as you are presenting it to
11 me here, refreshes my recollection of this
12 document.

13 Q. Does it remind you whether you
14 saw this document yesterday or not?

15 A. I answered that question to you
16 already.

17 Q. And you answered it no?

18 A. No.

19 Q. Mr. Celini, do you see that this
20 document has a draft header on the top of the
21 first page?

22 A. I see it.

23 Q. And the dates are bracketed both
24 on the front page Bates ending '1210 as well
25 as in the first recital -- sorry, the first

1 A. CELINI

2 paragraph above the recitals in '1211?

3 A. Yes.

4 Q. Do you understand this to be the
5 final executed version of the July 2008
6 amendment and restatement to the MMLPSA?

7 A. Based on the fact that it is
8 executed by all the parties, yes.

9 Q. Just to be clear, you were an
10 attesting witness to Mr. Groody's signature;
11 is that right?

12 A. Yes.

13 Q. And that's on page ALLY_0201224.
14 Did you review drafts of this agreement
15 before it was executed?

16 A. The answer is probably, yes. I
17 mean, the fact these typically go through
18 multiple drafts before they are finalized, so
19 I am sure I did.

20 Q. Do you have an understanding why
21 the MMLPSA was amended and restated in July
22 of 2008?

23 A. So these agreements change from
24 time to time based on a number of inputs. So
25 I don't recall specifically why July 1st one

1 A. CELINI

2 could have been done. It could have been as
3 a result of a regulatory examination, inputs,
4 comments. It could have been for a number of
5 reasons.

6 Q. Do you recall whether it was
7 amended in connection with the broker-to-bank
8 project?

9 A. No. They are separate. They are
10 not related activities.

11 Q. Does the MMLPSA -- does the
12 MMLPSA have any relationship to the
13 broker-to-bank project?

14 A. I think I just answered that.
15 No, they are separate. One was for an inflow
16 activity. Discovering the sale of loans,
17 outflow activity.

18 Q. And the bank and GMAC Mortgage
19 had an MMLPSA long before the broker-to-bank
20 project, right?

21 MR. BROWN: Objection to form.

22 A. Yes.

23 Q. Okay. And when GMAC Mortgage was
24 originating loans, the flow of loans, as I
25 understand it, and you tell me if I am right,

1 A. CELINI

2 is that GMAC Mortgage would originate, GMAC
3 Mortgage would then sell the loans to the
4 bank and the bank would then sell the loans
5 back to GMAC Mortgage pursuant to the MMLPSA,
6 whichever MMLPSA version was applicable at
7 the relevant time, and then GMAC Mortgage
8 would then sell the loans to GSEs or other
9 third-parties, is that the general flow?

10 MR. BROWN: Objection to form.

11 A. You need to be more specific. So
12 when? So at different times the flow may
13 have varied.

14 Q. In early 2006; sorry, in early
15 2007.

16 A. So that -- at that time period,
17 yes, it would have been the general flow. So
18 we used the -- the bank was purchased
19 underneath the exemption. In general that
20 was before the brokering activity started or
21 purchased from correspondence, as I explained
22 to you earlier, and would generally hold, you
23 know, would warehouse the loans prior to
24 their ultimate delivery offered to the GSEs
25 or ultimate investors.

1 A. CELINI

2 Q. And under that scenario, for
3 loans that GMAC Mortgage was originating, who
4 retained any fees paid by consumers?

5 MR. BROWN: Objection to form.

6 A. I am not sure. I mean, you
7 know -- so if it was originated -- I am not
8 sure. You'd have to clarify who retained
9 what -- what fees? What type of fees?

10 Q. So if points are paid by a
11 consumer and GMAC Mortgage originated the
12 loan and then sold that loan to the bank, did
13 GMAC Mortgage pass that -- those fees --
14 sorry, those origination points onto the
15 bank?

16 A. Thank you for the clarification.
17 Yes, they would have. We purchased a closed
18 loan. So it was -- whatever, you know, fees,
19 origination fees or in a capitalizable
20 activity, whether it be premiums or
21 discounts, were in there.

22 Q. What was the cost that GMAC
23 Mortgage paid for those loans when it
24 acquired them from the bank under the MMLPSA?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 Which MMLPSA are you talking about?

3 Q. In early 2008. Sorry, early
4 2007.

5 MR. BROWN: So before Cortese 2?

6 MS. MILLER: Before Cortese 2.

7 A. I need to see what that agreement
8 looked like at that time. So whatever the --
9 whatever -- would be governed by whatever the
10 MMLPSA terms and conditions were in effect at
11 that time.

12 Q. Do you have an understanding,
13 sitting here today, of what those terms and
14 conditions were?

15 A. I don't have a recall -- I don't
16 have a recollection specifically as to the
17 terms and conditions at that time. I would
18 have to see the document.

19 Q. Do you have a general
20 recollection of what they were?

21 A. No.

22 Q. After the broker-to-bank project
23 was implemented, GMAC Mortgage would make
24 initial contact with the customer as the
25 broker and would then refer that customer to

1 A. CELINI

2 the bank and the bank would then originate
3 the loan and then sell that loan to GMAC
4 Mortgage under the MMLPSA and then GMAC
5 Mortgage would then sell those loans to GSEs
6 or other third-parties; is that right?

7 A. So the sales would govern
8 whatever the terms of the MMLPSA were at that
9 time. As a general flow, that's how the
10 overall transactions were.

11 Q. Okay. So looking at Cortese
12 Exhibit 2, which is the document Bates
13 stamped ALLY_0201210, which is the amended
14 and restated MMLPSA dated July 1, 2008.
15 Could you turn to Section 1.24 on page 3,
16 which is titled Purchase Price. You see that
17 the purchase price with respect to first lien
18 mortgage loans means the Cost Basis plus
19 reserves associated with the loans?

20 A. I see that section.

21 Q. And is that -- do you have any
22 reason to believe that that was not the
23 purchase price under this agreement?

24 A. No, I have no reason not to
25 believe.

1 A. CELINI

2 Q. Okay. Looking at the definition *
3 of Cost Basis in Section 1.9 on page 2, Cost
4 Basis, it says "Means, with respect to a
5 mortgage loan, its net carrying value as
6 defined by the accounting principles
7 generally accepted in the United States of
8 America as amended to include without
9 limitation the unpaid principle balance of
10 such mortgage loan plus or minus any premium
11 or discount paid, net deferral fees or costs,
12 accrued interest and basis adjustments from
13 derivative loan commitments, hedge accounting
14 or lower of cost or market adjustments."

15 Do you see that?

16 A. I see it.

17 Q. What do you understand that to
18 mean in your own words?

19 A. My understanding Cost Basis is
20 GAAP. So it is as defined here. The Cost
21 Basis of the loan as originated with -- under
22 GAAP.

23 Q. And what is "plus or minus any
24 premium or discount paid, net deferral fees
25 or cost accrued interest and basis

JSN Objection
97:17-22:
FRE 611(a) (Non-
responsive)

1 A. CELINI

2 adjustments from derivative loan commitments,
3 hedge accounting or lower of cost or market
4 adjustments" mean?

5 MR. BROWN: Objection to form.

6 A. So what does that mean?

7 Q. Yes.

8 A. I mean, these are, again, the
9 GAAP terms that are typically associated
10 with, you know, the Cost Basis of a loan.
11 It's fair value accounting.

12 Q. This is fair value accounting?

13 A. Because it includes basis from
14 derivative loan commitments, hedge accounting
15 a lower to cost market adjustments. So it is
16 GAAP.

17 Q. You understand that to be fair
18 value of accounting?

19 A. Yes.

20 Q. Do you understand that there is a
21 difference between fair value accounting and
22 lower of cost or market accounting?

23 A. Yes, I understand them and I
24 understand them both to be GAAP depending on
25 what was being applied at the time. What our

1 A. CELINI

2 overall principles that were being used.

3 Q. And you understand that this Cost
4 Basis is referring to fair value accounting?

5 A. I answered that, yes.

6 Q. Do you understand what accounting
7 the bank was using in July of 2008?

8 A. Should be fair value accounting,
9 if that's the way it was defined here. I
10 wasn't the CFO at the time so --

11 Q. And if it wasn't fair value
12 accounting, what would you understand this
13 provision to mean?

14 MR. BROWN: Objection to form.

15 A. GAAP. I answered you already.
16 So, again, it is generally accepted
17 accounting principles. GAAP. Whatever GAAP
18 was being followed at the time.

19 Q. So I am trying to understand in
20 plain English if the bank were using lower of
21 cost or market accounting, what would GMAC
22 Mortgage pay GMAC Bank for a loan?

23 MR. BROWN: Objection to form.

24 A. I believe I have answered that
25 to you.

1 A. CELINI

2 Q. I would like you to answer it
3 again.

4 MR. BROWN: Objection to form.

5 A. You know, I don't know where you
6 are going with it. So I believe I have
7 answered it to you. Here, as defined
8 underneath the MMLPSA, it is Cost Basis as
9 defined as GAAP. So I can't opine as to what
10 the affiliate's accounting was. I can only
11 opine as to what I generally know was the
12 bank's accounting. And if the bank was using
13 GAAP, that's what it should be. I mean the
14 bank is using GAAP it is going to be whatever
15 its GAAP accounting is at the time.

16 Q. You keep saying GAAP?

17 A. Yes.

18 Q. And you are including GAAP to
19 mean either fair value or lower of cost or
20 market, right?

21 A. Yes.

22 Q. Whatever was being used by the
23 bank at the time?

24 A. Yes. Because either or -- either
25 of those two is GAAP.

1 A. CELINI

2 Q. Either of those two is GAAP, and
3 do you have an understanding -- I guess you
4 already said. Do you know -- were you
5 involved in any discussions in July of 2008
6 about transitioning the bank's accounting to
7 fair value accounting?

8 A. No, that's chief risk
9 officer, no.

10 Q. Who was responsible for putting
11 together this amended and restated MMLPSA?

12 MR. BROWN: Objection to form.

13 A. The parties that were here. The
14 signatories, I would assume.

15 Q. Is it your understanding that
16 Mr. Groody drafted this agreement?

17 MR. BROWN: Objection to form.

18 A. So as a signatory, I would assume
19 that he was the drafter. I am sure he had
20 inputs from counsel as well. So both
21 parties.

22 Q. Okay. Were you involved in
23 negotiating this agreement with GMAC
24 Mortgage?

25 A. I can't recall. I was involved

1 A. CELINI

2 in reviewing. As an attester, I was involved
3 in reviewing these documents but I didn't
4 negotiate.

5 Q. Were you involved either as an
6 active participant or as an observer in any
7 discussions with GMAC Mortgage related to
8 this agreement?

9 A. As an observer, yes.

10 Q. Did you participate in meetings
11 as an observer related to this agreement with
12 GMAC Mortgage?

13 A. I don't recall, honestly. I
14 mean, we -- I reviewed almost -- I had to
15 review almost all of these things. So I
16 would review them. I don't know if I -- I
17 don't recall if I participated in any
18 specific meetings on this.

19 Q. Were you -- do you know if there
20 was any -- strike that.

21 In the discussions that you were
22 a part of between GMAC Bank and GMAC Mortgage
23 related to the MMLPSA, did the bank ever tell
24 GMAC Mortgage that it was intending to
25 transition to fair value accounting?

1 A. CELINI

2 MR. BROWN: Objection to form.

3 A. I have no idea. I don't -- no.
4 Again, I didn't -- I answered your question
5 already. I'm an attester. I was a reviewer.
6 I didn't negotiate the terms of this.

7 Q. Right. But you said that you
8 participated in discussions as an observer.
9 I want to know, any discussions that you ever
10 heard about this agreement between GMAC Bank
11 and GMAC Mortgage, did GMAC Bank represent to
12 GMAC Mortgage that it was intending to
13 transition to fair value accounting?

14 MR. BROWN: Objection to form.

15 A. Let me make sure -- as my role as
16 an observer in these meetings, were those
17 statements -- I can answer I am not aware of
18 any of those discussions during my
19 participation as an observer.

20 Q. Do you know when the bank
21 transitioned from lower of cost or market
22 accounting to fair value accounting?

23 A. No.

24 Q. Do you know whether under this
25 definition of Cost Basis there had been a

1 A. CELINI

2 material impact on the transaction if,
3 depending on whether Ally Bank were using
4 fair value or lower of cost or marketing
5 accounting?

6 MR. BROWN: Objection to form.

7 A. I don't understand. What
8 transaction?

9 Q. Would the cost -- would the
10 definition of Cost Basis, under the MMLPSA,
11 be different if the bank were using fair
12 value or lower of cost or market accounting?

Plaintiff's Objection
104:9-25, Lack of
personal knowledge/
speculative (FRE 602);
calls for legal
conclusion

13 MR. BROWN: Objection to form.

14 A. I am not too sure. You are
15 asking me do I know if the transactions
16 were -- been different? I mean they would
17 be. One would be under fair value and one
18 would be under low COM. So yes, they would
19 be different.

20 Q. And would the purchase price be
21 different?

22 A. Yes, they would be different
23 because they would be under two different
24 basis. Different basis, right. So it is
25 obvious, right, they would.

1 A. CELINI

2 Q. And do you think that the
3 purchase price is a core term of the MMLPSA?

4 MR. BROWN: Objection to form.

5 A. It's here. It is in the
6 document. So it is -- all terms are
7 important.

8 Q. Mr. Celini, looking back at the
9 E-mail chain that was previously marked as
10 Cortese Exhibit 4. I believe you stated
11 earlier that there were a number of scenarios
12 being discussed and you're not sure one way
13 or another whether this E-mail is talking
14 about the final scenario; is that right?
15 Sorry, so the record is clear, the E-mail
16 exchange between yourself and Mr. Whitehead
17 that appears on EXAM '0003976.

18 A. Yes, I answered you. I already
19 answered you. There were -- I'm not certain
20 that this was the final version as to the way
21 the project. But like I said, there were
22 multiple versions, extensive discussions with
23 the team and a number of scenarios which some
24 of them never came to fruition.

25 Q. Can you tell me how the

1 A. CELINI

2 discussion in this E-mail chain differs from
3 the final scenario that was implemented?

4 A. No, I --

5 MR. BROWN: Objection to form.

6 A. No.

7 Q. It might not differ at all,
8 right?

9 A. I don't -- I don't know. I
10 mean -- so I don't know. I don't know how
11 it -- I have to see what the final broker
12 agreement and the final MMLPSA. Those are
13 the driving documents. So these e-mails may
14 have been one of thousands, like I said,
15 various scenarios. So I can't tell by
16 looking at these e-mails.

17 Q. So you said that the broker
18 agreement and the MMLPSA were the driving
19 agreements. What were they the driving
20 agreements of?

21 A. The brokering activity and the
22 sales activities.

23 Q. So sitting here, based on your
24 recollection and understanding of the
25 agreement -- of the agreements as they were

1 A. CELINI

2 finalized, there is nothing in this E-mail
3 that you can identify as being inconsistent
4 with the final scenario that was implemented
5 in the project, right?

6 MR. BROWN: Objection to form.

7 A. Yeah, that I don't get. So my
8 view of this -- my looking at these e-mails
9 tells me what? Can you clarify?

10 Q. I am asking you if, sitting here
11 today, you can tell me if there is anything
12 in this E-mail that is inconsistent with your
13 understanding of the end result of the
14 broker-to-bank project?

15 MR. BROWN: Without showing him
16 the documents he just referenced?

17 A. I can't tell.

18 MS. MILLER: Yes, without
19 showing him the documents?

20 MR. BROWN: Objection to form.

21 Q. Based on your recollection of the
22 project.

23 A. I can't answer that question. I
24 can't answer it looking at this E-mail
25 without looking at -- again, these e-mails

1 A. CELINI

2 were not the driving, you know, end result of
3 the documents. I have already answered that.
4 So I can't answer that just by looking at
5 this E-mail.

6 Q. Do you have an understanding of
7 what the final agreements reflected?

8 MR. BROWN: Objection to form.

9 A. I had an understanding. I don't
10 recall them, the nuances of all of them. I
11 would have to look at the agreements to
12 have -- to refresh my understanding of those.

13 Q. Mr. Cortese, during the time that
14 the -- sorry, Mr. Celini, during the time --
15 Mr. Celini, during the time that the
16 broker-to-bank project was ongoing, about how
17 much time of yours did it occupy?

18 A. This is in the middle of the debt
19 crisis. It was madness. It was all hands on
20 deck. So who knows. I mean, it was -- we
21 were working extensively. So, I mean, how
22 much percentage of my time, I don't recall
23 how much. It was a lot. And it was a large
24 project. No small task.

25 Q. So did you spend multiple hours

1 A. CELINI

2 every day working on the broker-to-bank
3 project?

4 MR. BROWN: Objection to form.

5 A. I mean, yes.

6 Q. And how long did the project
7 last for?

8 A. Several months. I don't recall
9 how long. Several months.

10 Q. Were you consistently involved
11 from beginning to end?

12 A. Yes.

13 Q. And during that time, did you
14 feel like you had a strong understanding of
15 the project and its components?

16 A. Yes.

17 Q. From the time that you left Ally
18 Bank until you were interviewed by the
19 examiner, have you thought much about the
20 broker-to-bank project?

21 A. Have I thought much about it?

22 Q. Yeah.

23 A. No, not much. But I thought that
24 project, basically, let GMAC Mortgage and
25 ResCap live for another couple of years. It

1 A. CELINI

2 wasn't on my mind every day. But it was a
3 Herculean effort that allowed them to live.

4 Q. So you didn't sit around at night
5 and review all of the details of the
6 agreement?

7 A. No. No.

8 Q. When were you interviewed by the
9 examiner?

10 A. Honestly, I don't recall the
11 date.

12 Q. Does February 2013 sound right?

13 A. Sounds about right. It was cold.

14 Q. It was cold outside?

15 A. It was cold outside. It was here
16 in Philadelphia. No offense, I don't
17 remember what I ate for dinner last night.
18 My assistant keeps track of my calendar. So
19 whatever my calendar says. If that's what
20 the examiner says, that's the date it was.

21 Q. Does she calendar what you eat
22 for dinner?

23 A. No, she doesn't.

24 Q. Mr. Cortese, looking at --
25 Mr. Celini, I will stop.

1 A. CELINI

2 A. It is actually comical.

3 Q. You do laugh every time, and I
4 want wait to ask you when we are off the
5 record what's so funny about being thought of
6 as Mr. Cortese. I thought he was a lovely
7 gentleman.

8 MR. BROWN: I don't think it is
9 anything thought of Mr. Cortese. The
10 fact that you consistently do it. I
11 think he knows it is inadvertent.

12 THE WITNESS: Yes.

13 Q. It is much more meaningful after
14 you are a real person.

15 A. Just a second. Let me put my
16 microphone back on. It fell off. Okay. I
17 am back.

18 Q. Mr. Celini, looking at page V 134
19 in the examiner report.

20 MR. BROWN: Sorry, where are we?

21 MS. MILLER: Sorry, we are in
22 Celini 2.

23 MR. BROWN: Okay. What page?

24 MS. MILLER: Page V 134.

25 Q. It says, beginning in the second

1 A. CELINI

2 sentence of the first full paragraph, it says
3 "Celini explained that the contemplated
4 allocation of revenues and expenses generally
5 was the same as that under the existing
6 contractual agreements."

7 Do you agree with that?

8 A. For what context? I mean, what
9 are we speaking of? Just looking here. I am
10 reading the page.

11 Q. Sorry, let me just reorient you
12 in where we are. We are in the section of
13 the examiner's report that's discussing the
14 genesis of the brokering consumer loans to
15 bank project and its objectives.

16 A. So again, I have never seen the
17 examiner's report, so I am just reading it
18 the way I can understand context.

19 Q. Sitting here today, do you think
20 that's -- that it is accurate -- an accurate
21 statement to say that the contemplated
22 allocation of revenues and expenses generally
23 was the same as that under the existing
24 contractual agreements?

25 A. Again, what are existing

1 A. CELINI

2 contractual relationships, arrangements, what
3 does that mean?

4 Q. So if you look at footnote 673,
5 which is what that statement is referencing,
6 it has a citation to your interview and it
7 says, "For prebroker agreement, bank
8 originated loans, the affiliate, GMAC
9 Mortgage, received the P&L impact of
10 origination income and expenses, quote, 'We
11 were not recognizing gains and losses on
12 these activities.'" "

13 Do you see that?

14 A. Okay. I see the footnote and I
15 am trying to get myself oriented to this
16 context here. So explain the contemplated
17 allocation -- generally was the same under
18 the existing contractual agreements. Okay.
19 I am just looking at the remainder of the
20 paragraph to get context here. So in
21 particular for the agreement. Okay, so now
22 once I have read this, can you restate your
23 question? You want to know if the sentence,
24 the second sentence there --

25 Q. Right.

1 A. CELINI

2 A. That "Celini explained that the
3 contemplated allocations of revenue and
4 expenses generally was the same as under the
5 existing contractual arrangements." So when
6 I read this, I don't recall the context of my
7 comment here. But this would tell me that,
8 when I look at this, is that the -- the
9 allocation of revenue expenses was -- is
10 under existing -- was underneath the existing
11 MMLPSA, is that what it is inferring? I am
12 not sure. It is not clear what it is
13 inferring to me. Contractual arrangements
14 seems to imply affiliate agreements. Doesn't
15 say which one. The one that drives revenues
16 and expenses probably would have been the
17 MMLPSA. Because that would have governed the
18 terms of what the sale of our loans was from.
19 So, again, where are we going with this? I
20 am confused.

21 Q. Okay. Was the bank recognizing
22 gains and losses on its purchase and sale of
23 loans from GMAC Mortgage and back to GMAC
24 Mortgage before the broker agreement?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 What time period? I don't know what
3 this is.

4 A. Which one? Again that's
5 prebrokers so that would be what, what month?
6 Again, the answer is the same thing.
7 Whatever the MMLPSA that was enforce, in
8 place at that time would have been the way
9 that we were generated revenues, and
10 honestly, I don't recall the exact terms and
11 the dates that they were in place, so
12 whatever the documents said.

13 Q. Do you have any reason to dispute
14 that, under the MMLPSA, that was governing
15 immediately prior to the broker agreement
16 being entered into, that the bank was not
17 recognizing gains or losses on those
18 activities?

19 MR. BROWN: Objection to form.

20 A. So I need to see the specific
21 document before I can make any assertion as
22 to whether -- what was happening. Because I
23 just don't recall. Again, it is not
24 committed to memory as to what was -- what
25 the basis for accounting was being done at

1 A. CELINI

2 that time.

3 Q. You don't dispute you said that
4 to the examiner, right?

5 MR. BROWN: Objection to form.

6 A. It is here. I made many
7 statements to the examiner. It is hard to
8 really understand the context of this one
9 within the overall. If it's here, it is
10 probably accurate that I did say it. But I
11 can't really make out the context from it,
12 Counselor. It is hard to understand just by
13 reading these paragraphs -- this specific
14 paragraph here.

15 Q. Did you review any documents with
16 the examiner during the examination?

17 A. Yes, several.

18 Q. And did you review several
19 versions of the MMLPSA -- sorry, I won't say
20 "versions" -- several different MMLPSAs?

21 A. Yes, I did.

22 Q. And did you review the brokering
23 agreement with the examiner?

24 A. I don't recall. I know we looked
25 at several MMLPSAs. I don't know if we

1 A. CELINI

2 looked at the broker agreement. We may have.

3 Q. The last -- very last sentence in
4 that paragraph --

5 MR. BROWN: Are we on the same
6 page, sorry?

7 Q. The same page. Last sentence in
8 that paragraph which starts the last four
9 words on the page says "The cost based
10 pricing for loans purchased effectuated under
11 the 2008 MMLPSA in July 2008 pipeline swap as
12 implemented would have captured the effect of
13 the FAS 91 deferrals."

14 Do you know what that means?

15 MR. BROWN: Objection to form.

16 Q. Sorry let me reask. Do you know
17 what the effect of the FAS 91 deferrals
18 would be?

19 MR. BROWN: Object to form.

20 A. No, not in this context.

21 Q. Under lower of cost or market
22 accounting, what effect would five -- FAS 91
23 deferrals have on the purchase price under
24 the July 1, 2008, amended and restated
25 MMLPSA, which was marked Cortese Exhibit 2?

1 A. CELINI

2 MR. BROWN: Cortese 2?

3 A. So in what section of -- in this
4 document? So FAS 91 deferrals are part of
5 the Cost Basis of the loan.

6 Q. And what effect do they have on
7 the Cost Basis of the loan?

8 MR. BROWN: Objection to form.

9 A. What effect do they have?

10 Q. Yes.

11 A. Typically would increase the Cost
12 Basis.

13 Q. And if the bank were collecting
14 fees from the consumer, what effect would
15 those fees, if deferred under FAS 91, have on
16 the Cost Basis of the loan?

17 MR. BROWN: Objection to form.

18 A. I just answered that. So any fee
19 that is deferred is -- I answered that. So
20 it increases the Cost Basis of the loan.

21 Q. Okay. So if a customer pays \$10
22 in points to the bank, the bank defers those
23 \$10, the Cost Basis, on the loan with the UPB
24 of \$100, the Cost Basis of the loan is what?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 At what time?

3 Q. Under this agreement, lower of
4 cost of market accounting.

5 MR. BROWN: Objection to form.

6 A. So first off, you are mixing
7 here. So points are not FAS 91 deferral
8 fees, okay. So points are part of the
9 premium or discount that is paid when you
10 originate a loan. So the answer to your
11 question is the same. Fees collected that
12 are deferrable under FAS 91 are part of the
13 Cost Basis of the loan. Answer. Asked.
14 Answer.

15 Points collected are not part of
16 FAS 91 deferral. They're part of the UPB or
17 premium or discount, which is different from
18 a FAS 91 adjustment.

19 Q. So when you say fees collected,
20 they increase the Cost Basis -- when you say
21 fees collected by the consumer, you're
22 talking about origination fees, processing
23 fees?

24 MR. BROWN: Objection.

25 Q. Appraisal fees and the like,

1 A. CELINI

2 right?

3 MR. BROWN: Objection. I think
4 you misspoke. You said fees collected
5 by the consumer.

6 Q. Sorry. When you say fees
7 collected from the consumer, you are
8 referring to origination fees, processing
9 fees, appraisal fees and the like, right?

10 MR. BROWN: Objection to form.

11 A. I answered that before.

12 Q. What was your answer?

13 MR. BROWN: Objection to the
14 form.

15 A. You can look at the tape. There
16 are various ones. So there is a laundry
17 list. You can look down a HUD 1 and see what
18 the fees that are there, and those fees that
19 are shown on the HUD 1, some of them are
20 capitalizable and deferrable and others are
21 not. So, again, there is a long list of
22 them. So application fees, origination fees.
23 Those are just examples of them. You have
24 asked them and I have answered those. I
25 cannot recite the whole list off of the

1 A. CELINI

2 HUD 1.

3 Q. I am not asking you to recite the
4 list. You don't like going with my
5 hypothetical of a simple single fee that you
6 collect. I am okay with that. But what I
7 want to understand is, if the bank is
8 collecting money from the consumer, whether
9 that's increasing or decreasing the Cost
10 Basis under lower of cost -- if the bank is
11 using lower of cost or market accounting
12 under the definition of Cost Basis in
13 Section 119 of the July 1, 2008, MMLPSA?

14 MR. BROWN: I think you mean
15 1.9.

16 MS. MILLER: 1.9.

17 MR. BROWN: Objection to form.

18 A. In principal, any fee that is not
19 a pass through, in other words, an appraisal
20 fee is collected from a consumer but is paid
21 out through to an appraisal, third-party
22 person. So any fee that's not paid out as
23 part of a pass through would become part of
24 the basis of a loan.

25 Q. And I want to know if it

1 A. CELINI

2 increases or decreases the Cost Basis?

3 MR. BROWN: Objection to form.

4 A. I answered this before. It would
5 increase the Cost Basis of a loan. Just by
6 its nature of the deferral. Deferral, debit,
7 equals increase the basis.

8 MS. MILLER: I think we have to
9 go off the record because we are at
10 the end of the tape.

11 THE VIDEOGRAPHER: We are now
12 going off the video record. That
13 concludes tape number 2. The time is
14 11:47.

15 (Whereupon, a recess was held.)

16 THE VIDEOGRAPHER: We are now
17 back on the video record. This
18 commences tape number 3, November 8,
19 2013. The time 11:59.

20 Please continue.

21 BY MS. MILLER:

22 Q. Mr. Celini, why did you leave the
23 bank?

24 A. I was left -- I was terminated
25 based on the reorganization as an executive

Plaintiff's
Objection
122:22-123:25
Irrelevant (FRE
401, 402)

1 A. CELINI

2 changeover.

3 Q. What is an executive changeover?

4 A. Folks from another institution
5 show up with a CEO and one by one replace the
6 executive team of the previous organization.
7 So a number of my colleagues, Mr. Groody, our
8 chief risk officer, every one of them, most
9 of the executive team was relieved with the
10 arrival of a new CEO and chairman. So
11 reorganization.

12 Q. And when was -- when did that
13 happen?

14 MR. BROWN: Objection to form.

15 Q. When was the executive
16 changeover?

17 A. The dates of my employment should
18 be on the record. You guys should know that.
19 So that happened in 2009. November of 2009.

20 Q. Was the timing around the same
21 for your executive colleagues that you just
22 mentioned?

23 A. On or about. Over plus or minus
24 months. I was one of the last ones to be
25 around.

1 A. CELINI

2 Q. And Mr. Celini, do you know
3 that -- do you know who Mr. Glassner is,
4 Adam Glassner?

5 A. Yes.

6 Q. Who is Mr. Glassner?

7 A. Adam Glassner was head of capital
8 markets for -- he ran correspondent lending
9 and capital markets for us at ResCap and he
10 had a role in the bank. He oversaw the
11 correspondent lending group for a small time,
12 for a short period of time.

13 Q. And did Mr. Glassner have any
14 involvement in the broker-to-bank project?

15 A. Not that I recall. A lot of
16 people came in and out of it so --

17 Q. And did the MMLPSA govern the
18 purchase by GMAC Mortgage of correspondent
19 loans that the bank held?

20 MR. BROWN: Objection to form.

21 A. I answered that earlier this
22 morning, right. The bank originated -- the
23 bank had various asset acquisition
24 activities, so the correspondent activities
25 those loans were in the bank. Or purchased

1 A. CELINI

2 by the bank.

3 Q. So my question is, whether GMAC
4 Mortgage bought those assets from the bank
5 under the MMLPSA?

6 A. Yes.

7 Q. So the MMLPSA, stated
8 differently, the MMLPSA did not only cover
9 those mortgages that were either originated
10 by GMAC Mortgage or by the bank depending on
11 the period?

12 A. We covered all mortgages.

13 Q. Okay. Are you aware that there
14 was an investigation conducted into certain
15 accounting under the MMLPSA after your
16 departure?

17 A. No, not specifically.

18 Q. Do you know generally?

19 A. No.

20 Q. Do you know that Mr. Glassner
21 raised concerns about how the bank was --
22 what revenues the bank was retaining under
23 the MMLPSA agreement?

24 A. No.

25 Q. I am going to represent to you

1 A. CELINI

2 that at the time the July 1, 2008, Master
3 Mortgage Loan Purchase and Sale Agreement was
4 signed and became effective, which is marked
5 as Cortese Exhibit 2, was signed and became
6 effective, the bank was using lower cost or
7 market accounting for its mortgage assets,
8 okay?

9 MR. BROWN: For all mortgage
10 assets? You can represent what you
11 want to represent. But I will tell
12 you that representation isn't correct.

13 Q. Mr. Cortese -- sorry, Mr. Celini,
14 did you have an understanding of what
15 accounting the bank was using for mortgages
16 acquired by -- sorry, that it was acquiring
17 from GMAC Mortgage?

18 MR. BROWN: Objection to form.

19 A. What period of time? When?

20 Q. In July of 2008.

21 MR. BROWN: Objection to form.

22 A. I don't recall specifically. It
23 would be GAAP whatever it was. I don't
24 recall the specific basis that was being
25 used.

1 A. CELINI

2 Q. Under GAAP, you could choose
3 different accounting methods, right?

4 A. Sure, yes.

5 Q. And they can all be GAAP
6 compliant, right?

7 A. Yes.

8 Q. And one of them would be lower of
9 cost or market, right?

10 A. Yes, that's correct.

11 Q. And another one would be fair
12 value, right?

13 A. That's correct as well.

14 Q. And those are not the same,
15 right?

16 A. That is correct.

17 Q. And I am asking you, if you know,
18 whether July 1, 2008, the bank was using
19 lower of cost or market accounting?

20 A. Honestly, I don't recall.

21 MR. BROWN: Objection.

22 THE WITNESS: Sorry.

23 A. I don't recall. Honestly, I
24 don't recall.

25 Q. Okay.

1 A. CELINI

2 A. It's a long time ago.

3 Q. When you were the CFO of GMAC
4 Bank, what accounting was the bank using for
5 mortgage loans acquired from GMAC Mortgage?

6 A. That would have been in 2001
7 through 2003, approximately, correct?

8 Q. Right. I think you said 2004,
9 but yeah.

10 A. So we were in during in that
11 time. It was a long time ago. Probably
12 using low COM at the time and again, that
13 applies to -- we may have used some fair
14 value assumptions on certain parts of our
15 portfolio, but for our held for investment
16 portfolio, it would have been one way. We
17 could have had another basis for our held for
18 sale. All portfolios are not accounted for
19 in the same way.

20 Q. And did you have an understanding
21 or do you recall whether there was a
22 different accounting basis used for the held
23 for income portfolio? Held for investment
24 portfolio?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 At what time?

3 Q. When you were CFO of GMAC Bank.

4 A. The portfolio would have been on
5 a low COM basis.

6 Q. Would that have been the same for
7 the held for sale portfolio?

8 A. It's been awhile back. So I
9 think -- it probably was at the beginning and
10 then we moved it to, you know, a fair value
11 over a period of time. But I don't recall
12 when that happened. It slips my mind.

13 Q. Do you know whether it happened
14 while you were the CFO of GMAC Bank?

15 A. I honestly don't recall when it
16 cut over.

17 Q. Is it possible that it didn't
18 happen until the end of 2008?

19 MR. BROWN: Objection to form.

20 A. Again, I wasn't CFO at the time.
21 It is possible. So, again, this was a long
22 time ago. I don't recall. Could have
23 happened then.

24 Q. I will represent to you that it
25 happened in late 2008, okay?

1 A. CELINI

2 A. Okay.

3 MR. BROWN: Again, you can
4 represent what you want to represent.
5 I will tell that your representation
6 is incorrect.

7 MS. MILLER: Okay.

8 Q. Looking at Cortese Exhibit 2,
9 which is the July 1, 2008, MMLPSA. Can you
10 tell me whether points collected by GMAC
11 Mortgage on loans brokered by GMAC Mortgage
12 to the bank were retained by GMAC Mortgage or
13 the bank?

14 MR. BROWN: Objection to form.
15 Sorry, I think you might have
16 misspoken. You said points collected
17 by GMAC Mortgage.

18 Q. Looking at the Cortese Exhibit 2,
19 which is the July 1, 2008, MMLPSA, can you
20 tell me whether points collected by the bank
21 on mortgages -- on loans brokered by GMAC
22 Mortgage to the bank were retained by GMAC
23 Mortgage or the bank?

24 MR. BROWN: Objection to form.

25 A. So were retained by the mortgage

Plaintiff's
Objection
130:18-133:23
Lack of personal
knowledge/
speculative (FRE
602)

1 A. CELINI

2 company or retained by the bank?

3 Q. That's what I want to know.

4 A. So your question was retained by
5 the mortgage or the bank? So let me think
6 through here. So points collected would be
7 part of the basis of the loan. It would be
8 part of the UPB and those, again, would have
9 been part of the description as covered here
10 for Cost Basis on the MMLPSA. So points
11 collected, discount points collected by the
12 bank at its origination would have been
13 included in the Cost Basis of the loan when
14 sold.

15 Q. Okay. At the end of the entire
16 transaction, at the end of the sale, I want
17 to know who has the net economic benefit from
18 the points collected, if it's held by the
19 bank, who benefits from it, the bank or GMAC
20 Mortgage?

21 MR. BROWN: Objection to form.

22 A. So we answered that. The
23 accounting that's prescribed here is --
24 that's where -- that's how the benefit -- the
25 GAAP benefit is derived here. So as

1 A. CELINI

2 described in this MMLPSA or when -- whatever
3 one was in place, that's where the economic
4 benefits were ascribed to. It is ascribed
5 here in the agreement.

6 Q. I am asking you, based on your
7 familiarity with these agreements, what the
8 benefit was. That's what I am asking you.

9 MR. BROWN: Objection to form.

10 A. So what the benefit was? Okay,
11 so there is a number of benefits. So it
12 describes -- they are described here. Sorry
13 not trying to be argumentative. The bank
14 would earn interest carry. It would have --
15 when it sold the loans, it would get whatever
16 the gains and losses are described in the
17 MMLPSA at that point in time.

18 Q. Okay. Can you detail for me the
19 gains and losses that were described in the
20 MMLPSA?

21 A. In this document?

22 Q. In this document with the
23 assumption that the bank was using low COM
24 accounting.

25 MR. BROWN: Objection to form.

1 A. CELINI

2 A. I have to study the agreement to
3 make sure I understand the pieces at the
4 time.

5 Q. Take as much time as you need.

6 A. Okay. So as described in this
7 document here, the bank would accrue, and you
8 were asking me for the benefits derived by
9 the bank, correct?

10 Q. Right.

11 A. The bank would accrue the income
12 for its holding period. And upon its sale,
13 it would be relieved at its Cost Basis plus
14 or minus any of its, you know, derivative
15 loan or hedge accounting, low COM
16 adjustments. So that would take the bank out
17 at no gain or loss. So its benefit would be
18 the coupon interest that it earned during the
19 period.

20 Q. And what benefits would be
21 derived from the bank -- by the bank if the
22 bank were using fair value accounting?

23 A. The same.

24 Q. And is your testimony based on
25 your review today of the MMLPSA consistent

1 A. CELINI

2 with your recollection of the agreement from

3 the time that you were at Ally Bank?

4 MR. BROWN: Objection to form.

5 A. These statements are made based

6 on review of the agreement that's here.

7 That's all I can -- I mean, I don't recall.

8 Assuming that these were executed, that means

9 they were in place. So that's what was

10 happening at the time. So, again, I was not

11 the CFO. I was an attester to this

12 agreement. So it is an inference, but that's

13 what was in place.

14 Q. And if the parties wanted to

15 modify that, to provide gain for the bank

16 under this agreement, would they have to

17 amend the agreement?

Plaintiff's Objection
134:14-19 Lack of
personal knowledge/
speculative (FRE 602);
calls for legal
conclusion

18 MR. BROWN: Objection to form.

19 A. So, yes, they would have to.

20 MS. MILLER: We can take a quick
21 break. I might be done.

22 THE VIDEOGRAPHER: We are now
23 going off the video record. The time
24 is 12:16.

25 (Whereupon, a recess was held.)

1 A. CELINI

2 THE VIDEOGRAPHER: Back on,

3 12:25.

4 BY MS. MILLER:

5 Q. Mr. Celini, I would like to mark
6 as Celini Exhibit 3, a document Bates stamped
7 RC '0030534 through '550, and it is the
8 Broker Agreement dated November 20, 2008,
9 between GMAC Mortgage -- sorry, between GMAC
10 Bank, GMAC Mortgage and Ditech LLC.

11 (Whereupon, Celini Exhibit 3, RC
12 '0030534 through '550 was marked for
13 identification as of this date by the
14 Reporter.)

15 Q. Mr. Celini, do you recognize this
16 document?

17 A. Yes, I do.

18 Q. And were you involved in the
19 preparation of this document?

20 A. Yes, I was.

21 Q. And did you -- were you involved
22 in the negotiation of the terms of this
23 agreement?

24 A. Yes, I was.

25 Q. And were you involved in the

1 A. CELINI

2 drafting of this agreement?

3 A. Yes, with counsel.

4 Q. Did you sign this agreement?

5 A. Yes, I did.

6 Q. And you executed the agreement on
7 behalf of the bank, right?

8 A. Yes.

9 Q. And, Mr. Celini, why were you the
10 bank representative who was designated to
11 execute this agreement?

12 MR. BROWN: Objection to form.

13 A. I am an officer of the bank. The
14 two parties here were the executive sponsors.

15 Q. The executive sponsors --

16 A. Yes.

17 Q. -- for the broker-to-bank project
18 that we have been talking about?

19 A. Yes.

20 Q. Is this agreement the culmination
21 of that project?

22 A. It is obvious, yes.

23 Q. Nothing is obvious unless it is
24 on the record. I will ask that again. Is
25 the Broker Agreement the culmination of the

1 A. CELINI

2 broker-to-bank project?

3 MR. BROWN: Objection to form.

4 A. Yes.

5 Q. Does this refresh your
6 recollection that it ended in around late
7 November 2008?

8 A. Yes.

9 Q. And can you describe, generally,
10 what the Broker Agreement provided?

11 MR. BROWN: Objection to form.

12 A. The terms and conditions by which
13 the affiliate would broker loans to the bank,
14 you know, in accordance with regulatory
15 requirements and generally accepted
16 accounting principles.

17 Q. And did the -- sorry, did GMAC
18 Mortgage receive a brokering fee in
19 connection with its services provided under
20 the Broker Agreement?

21 A. Yes.

22 Q. And how are those brokering fees
23 established?

24 A. Generally, through a 23 B
25 compliant process of serving what market

1 A. CELINI

2 prices are for broker fees in the
3 marketplace. Similar types of transactions.

4 Q. And do you recall whether, under
5 the MMLPSA, GMAC Mortgage would effectively
6 reimburse the bank for any broker fees that
7 it was paid?

8 MR. BROWN: Objection to form.

9 Q. Because they would be considered
10 a cost to the bank and therefore, increase
11 the Cost Basis of the loans being purchased?

12 A. I believe we've already answered
13 questions from the MMLPSA. This is a
14 separate document that governs the sale of
15 loans. Nothing to do with the brokering
16 activity.

17 Q. If the bank paid a brokering fee
18 in connection with the loan, would that
19 increase or decrease the Cost Basis under the
20 MMLPSA?

21 A. It would be an expense. So would
22 it increase the basis of the loan? I have to
23 think. It would be an expense to the bank
24 for the cost incurred by the affiliate to
25 source the loan. I believe under GAAP that

1 A. CELINI

2 would have been included in the basis of the
3 loan.

4 Q. Okay. So from GMAC Mortgage's
5 perspective, it was collecting a broker fee
6 but that was then also increasing the Cost
7 Basis that it had to pay for the loans when
8 it acquired them in the next step under the
9 MMLPSA?

10 MR. BROWN: Objection to form.

11 A. I need clarification on that.
12 Walkthrough that.

13 Q. Okay. So in Step 1, GMAC
14 Mortgage makes a contact with a customer and
15 brokers that customer to the bank and the
16 bank pays GMAC Mortgage a broker fee in
17 connection with that activity and that
18 happens -- that's governed by the Broker
19 Agreement, right?

20 A. That's correct.

21 Q. The bank then has a loan, which
22 GMAC Mortgage is going to purchase from the
23 bank under the MMLPSA, right?

24 A. That's correct.

25 Q. And under the MMLPSA, the

1 A. CELINI

2 purchase price is the Cost Basis of the bank,
3 right?

4 MR. BROWN: Objection to form.

5 A. Whatever the MMLPSA is in effect
6 at that time, right, yes.

7 Q. And under the July 1, 2008,
8 MMLPSA, the Cost Basis would be increased by
9 the broker fee that was paid to GMAC
10 Mortgage, right?

11 A. Yes.

12 MR. BROWN: Objection to form.

13 A. So yes, the Cost Basis would be
14 increased. GMAC Mortgage would recognize the
15 broker fee in income right away. That's for
16 their activities. So it is a deferrable cost
17 into the Cost Basis of the loan for the bank
18 for the affiliate's income.

19 Q. Right. Then when GMAC Mortgage
20 buys the loan from GMAC Bank, it is
21 purchasing it at the Cost Basis, which has
22 been increased by the broker fee, paid to
23 GMAC Mortgage under the Broker Agreement,
24 right?

25 MR. BROWN: Objection to form.

1 A. CELINI

2 A. As defined under Section 1.9, it
3 would be in there. And you would need to
4 reverse out the income that it recognized
5 upfront. So you can't book revenue twice.
6 You'd have to reverse out the revenue it
7 recognized at origination and then when it
8 purchased the loan.

9 Q. So under that scenario, GMAC --
10 it doesn't matter to GMAC Mortgage whether
11 the brokering fee is \$1 or \$100, right?

12 MR. BROWN: Objection to form.

13 A. You know, again, I can't speak
14 for the affiliate on their -- when the bank's
15 requirements are that it be compliant
16 with 23B.

17 Q. 23B requires that it only be at
18 market or better for the bank, right?

19 A. That's the general
20 requirements, yes.

21 MS. MILLER: I would like to
22 mark as Celini Exhibit 4, a document
23 Bates stamped ALLY_0017869
24 through '877.

25 (Whereupon, Celini Exhibit 4,

1 A. CELINI

2 ALLY_0017869 through '877 was marked
3 for identification as of this date by
4 the Reporter.)

5 Q. Mr. Celini, I have marked as
6 Celini Exhibit 4, a document entitled
7 Affiliate Transaction Memo, which is from you
8 to file regarding the Master Mortgage Loan
9 Purchase and Sale Agreement amended and
10 restated 6-1-07 with a date June 6, 2007,
11 revised 10-31-2007. Do you recognize this
12 document?

13 A. Yes, I do.

14 Q. Is it a document that you
15 prepared?

16 A. Yes, it is.

17 Q. And did you draft it?

18 A. Yes.

19 Q. Do you recall why you revised
20 this memo in late October of 2007?

21 A. I don't know. It was a long time
22 ago. When I look at the change here, it
23 could have been a number of reasons. In this
24 case, it could have been in response to a
25 regulatory examination finding or -- at the

1 A. CELINI

2 time. I don't recall specifically, but it
3 could have been -- it may have been because
4 of a finding from the FTIC.

5 Q. Do you recall if there were any
6 findings from the FTIC in or around October
7 of 2007 that you may have been responding to?

8 A. My memory is fuzzy back to the
9 specifics of the report of the examination at
10 the time. I do know that the FTIC did have
11 some concerns about the terms and conditions.
12 So at various times.

13 Q. And when you say "terms and
14 conditions," you mean specifically the terms
15 and conditions of the MMLPSA?

16 A. Yes. And the marketing pricing.
17 There was discussion. They felt comfortable
18 with market pricing.

19 Q. And turning to page 2 of the --
20 sorry, is this a document that you reviewed
21 yesterday that refreshed your recollection?

22 A. I am sorry, can you repeat?

23 Q. Did you review this document with
24 counsel yesterday and did it refresh your
25 recollection?

1 A. CELINI

2 A. No.

3 Q. Sorry, looking at page 2 of
4 Celini Exhibit 4, and looking under the
5 bullet that says "23B compliant pricing
6 source for first lien loan sales is arrived
7 at through the following constructs." Do you
8 see that right in the middle of the page?

9 A. Yes.

10 Q. Then it says, "1, loan sales to
11 affiliate occur at the actual market value
12 price paid by GMACB to acquire such loan from
13 affiliated or third-party correspondence."

14 Do you see that?

15 A. Yes.

16 Q. Then it says "Plus/minus accrued
17 interest discount and premium." Do you see
18 that?

19 A. That's correct. I see it, yes.

20 Q. Is that consistent with how you
21 read the MMLPSA, the July 1, 2008, amended
22 and restated MMLPSA that we were just
23 looking at?

24 MR. BROWN: Objection to form.

25 This document is from 2007.

1 A. CELINI

2 A. You are talking about
3 two separate documents.

4 Q. Sorry.

5 A. This is for 2007. The other one
6 was 2008.

7 Q. Thank you.

8 MS. MILLER: Mr. Celini, I would
9 like to mark as Celini Exhibit 5, the
10 a document Bates stamped ALLY_0018275
11 through '290, which is the Master
12 Mortgage Loan Purchase and Sale
13 Agreement between GMAC Bank and GMAC
14 Mortgage LLC amended and restated
15 June 1, 2007.

16 (Whereupon, Celini Exhibit 5,
17 ALLY_0018275 through '290 was marked
18 for identification as of this date by
19 the Reporter.)

20 Q. Mr. Celini, looking at the
21 definition of Cost Basis on page '18277 of
22 Celini Exhibit 5. Can you explain how, if at
23 all, it differs from the definition of Cost
24 Basis in the July 1, 2008, MMLPSA which was
25 previously marked as Cortese Exhibit 2?

1 A. CELINI

2 A. The two terms from Section 1.9 of
3 each agreement varying that the one from 2008
4 reflects fair value accounting basis. Net
5 carrying value.

6 Q. What does the Cost Basis in
7 Celini Exhibit 5 for 2007 MMLPSA reflect?

8 A. It is GAAP as defined under Cost
9 Basis. So that would probably be a low COM
10 type of basis.

11 Q. What do you understand the
12 reference low COM to mean in the definition
13 of Cost Basis in Cortese Exhibit 2?

14 MR. BROWN: Objection to form.

15 A. We answered that before.

16 Q. Can you tell me what the
17 answer was?

18 MR. BROWN: Objection to form.

19 A. I will repeat. Fair value
20 accounting concept for the Cost Basis as
21 defined -- as it defines it shows adjustments
22 from derivative loan commitments, hedge
23 accounting, lower cost of market adjustments.

24 Q. Comparing the 2007 and 2008
25 MMLPSAs does the purchase price to be paid by

1 A. CELINI

2 GMAC Mortgage differ?

3 MR. BROWN: Objection to form.

4 A. Haven't we answered this before?

5 Q. I don't think we have looked at
6 the 2007 MMLPSA before, no.

7 A. The 2007 document refers to
8 purchase prices. There is a difference
9 between market value and Cost Basis of the
10 mortgage loan at the cutoff date. And the
11 Cost Basis. So this is a -- in 2007 version
12 reflects, so the way a market value for
13 purchase. So the difference between
14 market -- the difference between market value
15 and cost plus the Cost Basis of the mortgage.
16 So this indicates that the purchase price
17 would be at market from the affiliate.

18 Q. Under the 2008 MMLPSA, the
19 purchase price was at Cost Basis?

20 MR. BROWN: Objection to form.

21 Q. Right?

22 MR. BROWN: Objection to form.

23 A. Yes, that's what the document
24 says. Let me clarify. In the 2008 document,
25 the document states first liens was at Cost

1 A. CELINI

2 Basis. Second liens was at market value.

3 Q. And what was the net benefit
4 retained by the bank under the 2007 MMLPSA?

5 A. Net benefit underneath the 2007?

6 Q. Right.

7 A. As described by, in the affiliate
8 transaction memo, which is your Exhibit 4.
9 It is described in there.

10 Q. So looking at the page 3 of
11 Celini Exhibit 4, the last sentence of the
12 indented paragraph says "The agreement allows
13 the bank to participate in transactions in
14 which it enjoys the benefits of interest
15 spread and market securitization activity
16 generating gains and liquidity at the direct
17 cost of legal investment bank underwriting
18 and upper costs normally associated in these
19 types of transactions."

20 A. Correct. In this case the bank
21 earns a carry during the period for first
22 mortgage assets. And has a forward
23 commitment for sale, so it doesn't take any
24 price risk. No gain or losses on sale, on
25 the sale or disposition of the assets.

1 A. CELINI

2 Allows the bank to manage its liquidity asset
3 appropriately.

4 MS. MILLER: I have no further
5 questions. Thank you.

6 MR. BROWN: Mr. Celini, before
7 we go off the record I have some
8 questions for you, but if you need a
9 break --

10 THE WITNESS: No, that's fine.
11 Proceed.

12 EXAMINATION BY

13 MR. BROWN:

14 Q. Mr. Celini, let's go to Cortese
15 Exhibit 2. Do you have that?

16 A. Yes.

17 Q. This is the July 1, 2008, MMLPSA
18 you were discussing earlier, correct?

19 A. Yes.

20 Q. Let's turn to page 2, definition
21 of Cost Basis on 1.9 or at 1.9. Do you see
22 that?

23 A. Yes.

24 Q. The MMLPSA provides a definition
25 for Cost Basis, right?

1 A. CELINI

2 A. Yes.

3 Q. Cost Basis is a defined term in
4 the agreement?

5 A. That is correct.

6 Q. Do you see where it says "Net
7 carrying value as defined by accounting
8 principles generally accepted in the United
9 States of America"?

10 A. Yes.

11 Q. As a CPA and finance executive,
12 do you understand that net carrying value has
13 a particular meaning under GAAP?

14 A. Yes.

15 Q. Do you also understand that the
16 phrase "accounting principles generally
17 accepted in the United States of America"
18 refers to U.S. GAAP?

19 A. Yes.

20 Q. If the bank's accounting
21 methodology is lower of cost or market, what
22 is its net carrying value as defined by GAAP?

23 A. Under low COM, the carrying
24 value -- the Cost Basis would be the UPB of
25 the loan plus or minus any discount, premium

1 A. CELINI

2 or discount purchased. So that's points paid
3 at a discount at origination. Plus any fees
4 that would be appropriate to be deferred
5 under FAS 91.

6 Q. And in your answer, you just used
7 the phrase Cost Basis. Were you referring to
8 the defined term Cost Basis as it exists in
9 the MMLPSA?

10 A. No, I was referring to it in
11 GAAP.

12 Q. Okay. So if the -- if the bank's
13 accounting methodology were lower of cost or
14 market, was its net carrying value, as
15 defined by GAAP, Cost Basis?

16 A. It would be the lower of that
17 cost or market price.

18 Q. And you provided the definition
19 of what the Cost Basis would be in your
20 previous answer?

21 A. Yes.

22 Q. If the bank were using fair value
23 accounting methodology, what would its net
24 carrying value be as defined by U.S. GAAP?

25 A. What would its net carrying

1 A. CELINI

2 value, is that the term used or did you say
3 fair value?

4 Q. Sorry. So let's go back. You
5 understand that net carrying value has a
6 particular meaning in U.S. GAAP, right?

7 A. Yeah.

8 Q. Is that correct?

9 A. Yes.

10 Q. If the bank is using a fair value
11 accounting methodology, what is its net
12 carrying value as defined by GAAP?

13 A. Net carrying value would be the
14 UPB of the loan plus or minus any premium or
15 discount plus any deferred fees that would
16 be, you know, capitalizable under FAS 91 plus
17 or minus any hedge gains or derivative gains
18 that would be used to hedge the specific
19 asset.

20 Q. If the bank were using fair value
21 accounting, would its net carrying value as
22 defined by GAAP be the fair value of the
23 asset?

24 MS. MILLER: Objection; leading.

25 A. Yes, it would be the fair value.

1 A. CELINI

2 It reflects the net of all those adjustments.

3 Q. If the bank -- strike that.

4 Are you familiar with hedge
5 accounting?

6 A. Yes.

7 Q. What is hedge accounting?

8 A. It's a nomenclature -- it's
9 another name for a fair value accounting. It
10 reflects the hedge gains. Hedge accounting
11 reflects the impact of the specific hedges
12 identifiable against a loan or a pool of
13 loans to be net against its activity.

14 Q. Is hedge accounting similar to
15 fair value accounting?

16 A. Yes.

17 Q. If the bank were using hedge
18 accounting, what would its net carrying value
19 as defined by GAAP be for a particular asset?

20 A. Again, it is a technical term.
21 The GAAP is explicit but it would be the fair
22 value. Net. That's the net -- that would be
23 the fair value of the loans.

24 Q. What is the difference between
25 the fair value of an asset and the assets or

1 A. CELINI

2 the Cost Basis of an asset?

3 A. So let me be careful here.

4 Because the GAAP is extensive. It is the

5 volatileness that describes it -- the fair

6 value generally reflects the net impact to

7 the cost of a loan, the basis of a loan at

8 origination. The cost of originating a loan

9 less the mark-to-market adjustments of any

10 derivatives or hedges that you have on

11 that -- on specifically, identified against

12 that asset. So it brings it to its market or

13 fair value, essentially.

14 Q. So the fair value is the fair

15 value under GAAP, right?

JSN Objection

154:14-18:

FRE 611(c) (Leading)

16 MS. MILLER: Objection.

17 A. I thought I answered that,

18 but yes.

19 Q. Mr. Celini, when the bank would

20 enter into an MMLPSA or any other affiliate

21 agreement, would it seek board approval?

22 A. Yes, that was a requisite under

23 policy.

24 Q. What do you mean by that?

25 A. We had -- the bank had an

1 A. CELINI

2 affiliate bank transaction that required all
3 transactions with affiliates to be subject to
4 formal agreements, in compliance with Reg W.
5 They would be documented by -- accompanied by
6 an affiliate transaction memo which would go
7 through the requirements to say, state its
8 compliance therewith to the various
9 provisions of Reg W that would have to be
10 presented to the board for -- as part of its
11 approval of the agreement.

12 (Whereupon, Celini Exhibit 6,
13 ALLY_PEO_'8380 through '8741 was
14 marked for identification as of this
15 date by the Reporter.)

16 Q. Mr. Celini the Court Reporter has
17 handed you Celini Exhibit 6. Do you have
18 that?

19 A. Yes.

20 Q. It is a document Bates stamped
21 ALLY_PEO_'8380 through '8741. Do you have
22 that?

23 A. Yes.

24 Q. This is a set of materials for a
25 July 2, 2008, Ally Bank board meeting. Do

1 A. CELINI

2 you see that?

3 MS. MILLER: Objection.

4 A. Yes.

5 MS. MILLER: It says GMAC Bank.

6 Q. Celini Exhibit 6 is a set of
7 materials for a July 2, 2008, GMAC Bank board
8 meeting. Do you see that?

9 MS. MILLER: Objection.

10 Q. Do you see that, Mr. Celini?

11 A. I see that.

12 Q. Do you see there are a list of
13 board of directors right in the middle of the
14 page?

15 A. Yes.

16 Q. Do you recognize those to be the
17 board of directors of GMAC Bank on or around
18 July 2008?

19 A. Those were the directors at that
20 time.

21 Q. Do you see at the bottom of the
22 first page, there are a list of cc's.

23 A. Yes.

24 Q. Were you one of those?

25 A. Yes, I am.

1 A. CELINI

2 Q. Would you have received this set
3 of board materials?

4 A. Yes, I would have.

5 Q. Would have you reviewed the set
6 of materials?

7 A. Yes.

8 Q. Let's turn to the page ending in
9 '8442.

10 A. I have it.

11 Q. What is this page, Mr. Celini?

12 A. It's a resolution for the board.
13 This -- the first page, '8442, is a summary
14 of the resolution describing the action
15 required of the board to amend the MMLPSA and
16 some other agreements, the ISDA and other
17 client agreement, right.

18 Q. Does this page contain a summary
19 of your revisions to the MMLPSA and of your
20 agreements?

21 A. Yes, it does.

22 Q. Do you see in the middle of the
23 page, there is a bullet point says "Major
24 points." Do you see that?

25 A. Yes.

1 A. CELINI

2 Q. Right below that --

3 MS. MILLER: Hold on.

4 Q. -- says "Amended and restated

5 Master Mortgage Loan and Sale Agreement

6 between GMAC Bank and GMAC Mortgage LLC."

7 Do you see that?

8 A. Yes, I do.

9 Q. Take a minute and review the
10 bullets underneath that heading and let me
11 know when you are finished.

12 A. Okay, I have read them.

13 Q. Mr. Celini, does that refresh
14 your recollection why the MMLPSA was amended
15 and restated in July 2008?

16 A. Yes, it does.

17 Q. Why was the MMLPSA amended and
18 restated in July 2008?

19 A. Basically, it was a FDIC request
20 and probably part of a report of examination
21 or earlier in that year.

22 Q. What was changed in the July 2008
23 MMLPSA in response to an FDIC request?

24 A. The resolution requires the
25 clarification of the term purchase price, I

1 A. CELINI

2 think was the defined term.

3 Q. What do you mean by that?

4 A. Well, going through this
5 refreshes my memory basically requires us to
6 change the Cost Basis to take -- to change
7 the Cost Basis to reflect the net carrying
8 value under GAAP. And it made some other
9 refinements to the agreement to clarify
10 take out.

11 Q. And by that, you mean that the
12 FDIC requested that the purchase price be
13 revised to --

14 A. The net carrying value. The fair
15 value.

16 MS. MILLER: Wait. He has to
17 finish his question because I am
18 waiting to object to it.

19 THE WITNESS: I apologize.
20 Getting anxious.

21 Q. Did the FDIC request that the
22 purchase price be revised to reflect net
23 carrying value under GAAP?

JSN Objection
159:21-25
FRE 602, 802 (Lacks
personal knowledge;
calls for hearsay)

24 MS. MILLER: Objection.

25 A. Yes.

1 A. CELINI

2 Q. Was the July 2008 amendment -- JSN Objection
3 MMLPSA amended to reflect GMAC Mortgage's 160:2-10 FRE 611(c)
4 purchase price to be net carrying value under (Leading)
5 GAAP?

6 MS. MILLER: Objection; leading.

7 A. Give me a moment, I will check
8 the actual document.

9 Q. It is Cortese Exhibit 2.

10 A. Exhibit 2, right. Yes.

11 Q. Did GMAC Bank or Ally Bank ever
12 use hedge accounting for its held for sale
13 portfolio?

14 MS. MILLER: Objection.

15 A. Honestly, I don't recall.

16 MR. BROWN: Nothing further at
17 this time.

18

19

20 (Continued on next page to include
21 jurat.)

22

23

24

25

1 A. CELINI

2 MS. MILLER: Anyone else?

3 We are done. Thank you for your
4 time.

5 THE VIDEOGRAPHER: That now
6 concludes this video deposition and
7 tape number 3. The time is 1307.

8 (Whereupon, at 1:07 p.m., the
9 Examination of this Witness was
10 concluded.)

11

12

13

AL CELINI

14

Subscribed and sworn to before me
15 this ____ day of _____, 2013.

16

NOTARY PUBLIC

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E X H I B I T S

EXHIBIT	EXHIBIT	PAGE
NUMBER	DESCRIPTION	
Exhibit 1	Hand drawn T accounts	54
	example	
Exhibit 2	Excerpts of the Report	56
	of Arthur J. Gonzalez	
Exhibit 3	RC '0030534 through	135
	'550	
Exhibit 4	ALLY_0017869 through	142
	'877	
Exhibit 5	ALLY_0018275 through	145
	'290	
Exhibit 6	ALLY_PEO_'8380 through	155
	'8741	

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I N D E X

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INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE
(NONE)	

C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, REBECCA SCHAUMLOFFEL, a Notary
Public for and within the State of New York,
do hereby certify:

That the witness whose examination
is hereinbefore set forth was duly sworn and
that such examination is a true record of the
testimony given by that witness.

I further certify that I am not
related to any of the parties to this action
by blood or by marriage and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of November, 2013.

REBECCA SCHAUMLOFFEL

WITNESS ERRATA SHEET

Witness Name: Al Celini

Case Name: In Re: Residential Capital

Date Taken: November 8, 2013

Page #_____ Line #_____

Should Read: _____

Reason for Change: _____

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Witness Signature: _____